

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DR. DENEAN ADAMS,

Plaintiff,

v.

BOARD OF EDUCATION HARVEY SCHOOL  
DISTRICT 152, GLORIA JOHNSON in her  
individual capacity, BETTY JOHNSON  
in her individual capacity,  
DR. KISHA McCASKILL in her  
individual capacity, JANET ROGERS  
in her individual capacity, TYRONE  
ROGERS in his individual capacity,  
LINDA HAWKINS in her individual  
capacity, FELICIA JOHNSON in her  
individual capacity,

Defendants.

No. 15 C 8144

November 2, 2018  
Chicago, Illinois  
9:30 a.m.

Trial

VOLUME 5  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SHARON JOHNSON COLEMAN, and a  
jury

APPEARANCES:

For the Plaintiff: MR. JEROME M. DAVIS, ESQ.  
9024 McIntosh Court  
Lakewood, Illinois 60014

For the Defendants: HAUSER IZZO PETRARCA GLEASON & STILLMAN  
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BY: MR. CHRISTOPHER L. PETRARCA

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1 APPEARANCES CONTINUED:

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1 THE CLERK: 15 C 8144, Adams versus Board of  
2 Education Harvey School District 152.

3 THE COURT: All right. Counsel, go ahead and state  
4 your name.

5 MR. DAVIS: Good morning, Your Honor. Jerome Davis  
6 for plaintiff.

7 MS. SCHWENDENER: Good morning, Your Honor. Jennifer  
8 Schwendener for defendants.

9 MR. PETRARCA: Good morning, Your Honor. Chris  
10 Petrarca also on behalf of defendants.

11 THE COURT: All right. So where are we at the  
12 beginning of today?

13 MR. DAVIS: I'd like to call or recall Mr. Tyrone  
14 Rogers.

15 THE COURT: Right. Finish that up.

16 MR. DAVIS: I anticipate that not being too long.  
17 And then I'd like to call in my case in chief Gloria Johnson  
18 and Betty Johnson. And then I anticipate resting.

19 THE COURT: All right. So what it sounds like is  
20 that will take us through the morning. And then maybe during  
21 the lunch break, at least part of it we'll be able to take  
22 maybe a half an hour of it -- I'll give us an hour definitely  
23 today. We'll take a half an hour of it or so, and you can make  
24 sure the evidence, the exhibits are in that are supposed to be  
25 in. Or at least that you want to at least submit. And then

1 when you officially rest, this Court will hear arguments on  
2 positions of -- at the close of your case. And then if  
3 depending on where we are -- do you have any, any witnesses to  
4 present today?

5 MS. SCHWENDENER: No, Your Honor. Assuming if we  
6 could do our direct of Betty and Gloria after counsel just to  
7 save time.

8 THE COURT: Sure. You have no objection just to  
9 doing it once?

10 MR. DAVIS: No.

11 THE COURT: All right. So -- in fact, that may push  
12 us over a little bit. We'll see.

13 MS. SCHWENDENER: Sure.

14 THE COURT: All right. Okay. But those are the two  
15 people that you have?

16 MS. SCHWENDENER: That's correct.

17 MR. PETRARCA: Yes, ma'am.

18 THE COURT: All right. Excellent. We'll get all the  
19 evidence in today. And then we'll do your motions, and we'll  
20 do instructions. And more than likely unless for some reason  
21 the instructions have taken on a life of their own and are  
22 perfection, if they're perfection, then, you know, are you  
23 ready to close today?

24 MR. DAVIS: No, Judge. I'd like some time to do my  
25 closing, prepare a proper closing. Close on Tuesday.

1 THE COURT: Okay. How long, how long do you think  
2 your closing will be?

3 MR. DAVIS: Probably no more than 30 minutes.

4 THE COURT: All right. So you want about -- let me  
5 do this. There's a lot here. We've stopped and we've started.  
6 I'll give each side 40 minutes.

7 MR. DAVIS: Okay.

8 THE COURT: You don't have to take it at all.

9 MR. DAVIS: Okay.

10 THE COURT: But the 40 minutes does include your  
11 rebuttal. All right.

12 MR. DAVIS: Okay.

13 THE COURT: So I'll give you that. So work within  
14 that time period. I'll be back out after we make sure all our  
15 jurors are here. And we'll get going and see how it is.

16 MR. DAVIS: Okay.

17 THE COURT: And because I kept saying Tuesday and I  
18 didn't think Friday was even beginning to be possible, I will  
19 allow you this. Otherwise I might have pushed it. But since I  
20 haven't allowed you any -- and you're a solo practitioner, the  
21 Court will keep to that schedule. Okay?

22 MR. DAVIS: Thank you.

23 THE COURT: All right. You're welcome. I'll see you  
24 all in a second -- oh, is there -- wait. Wait. Wait. Wait.  
25 Is there anything about witnesses testifying that I need to

1 know about some of the evidence -- you all -- you know what,  
2 why don't you all talk about it.

3 MS. SCHWENDENER: Sure.

4 THE COURT: Make sure there's nothing, oh, yes, now  
5 you know I'm going to bring up this. Or it's no secrets. This  
6 is just getting it in front of the jury the way you want it.  
7 Please try to have a conversation. If there's some exhibit,  
8 something that's been objected to before that you're going to  
9 try again or maybe the objection was overruled and you want to  
10 just say, hey, I'm going to go ahead and object to this or vice  
11 versa, talk about it for a second. And we're going to try to  
12 start at 9:45 sharp. Okay.

13 MS. SCHWENDENER: Thank you.

14 MR. DAVIS: Thank you, Judge.

15 (Short break taken.)

16 THE COURT: Anything on the record?

17 MS. SCHWENDENER: Yes, Your Honor.

18 THE COURT: All right. First -- well, first  
19 plaintiff, anything on the record?

20 MR. DAVIS: No, Judge.

21 THE COURT: All right. Counsel. Keep voices down  
22 because they'll be coming out in the hall.

23 MS. SCHWENDENER: Thank you, Judge. Yesterday  
24 plaintiffs indicated that they wanted to show portions of Mr.  
25 Rogers' deposition transcript to the jury. Counsel gave me

1 page numbers. I did review them. Two -- I think there's about  
2 five or six pages he wants to show. Two of which I have no  
3 objection to. But there are I think approximately three or  
4 four that I do have an objection to.

5 THE COURT: And is it the same objection?

6 MS. SCHWENDENER: Same for those four pages?

7 THE COURT: Yes.

8 MS. SCHWENDENER: Yes.

9 THE COURT: And what's the objection?

10 MS. SCHWENDENER: It's -- it discusses the severance  
11 agreement Mr. Kellogg received, and it talks about the numbers.  
12 And it goes to all of that.

13 THE COURT: Well, the Court already ruled as far as  
14 the numbers and the severance agreement, and especially since  
15 we don't have him here now. He's not testifying. Even more  
16 that that will not come in. The fact that he got a severance,  
17 I don't have a problem with that coming in. But no numbers, no  
18 specifics. All right.

19 MR. DAVIS: Fine, Judge.

20 THE COURT: All right. So whatever adjustment you  
21 need to make to comply with that. And if as to any of it, you  
22 want to keep your record and say you object, I'll just overrule  
23 it for the reasons stated. But if he's not here, there's not  
24 much detail you can go in about, about him. All right?

25 MR. DAVIS: Okay.

1 THE COURT: Thank you.

2 MR. DAVIS: What about his performance evaluations,  
3 Judge?

4 THE COURT: Whether or not he was given one?

5 MR. DAVIS: Yes.

6 THE COURT: You can say whether or not he was given  
7 one.

8 MR. DAVIS: And his ratings compared to my client's.  
9 Again he's a comparator here.

10 THE COURT: And he was in -- and this witness was  
11 there for all of it?

12 MR. DAVIS: Yes, he was on the board.

13 THE COURT: He was on, on the board --

14 MS. SCHWENDENER: He was there for all of?

15 THE COURT: I mean, he was -- he knows. He was there  
16 and present for the ratings to be given?

17 MR. DAVIS: Yes.

18 THE COURT: You know what I'm saying? He was part of  
19 the process of evaluating?

20 MR. DAVIS: Yes.

21 THE COURT: As opposed to --

22 MS. SCHWENDENER: Oh, Mr. Rogers was part of the  
23 process?

24 THE COURT: Yes.

25 MS. SCHWENDENER: I believe so. I'm not sure, Judge.



1 THE COURT: Well, unless you know -- unless you know  
2 otherwise, then I'm going to allow that in. Okay.

3 MR. DAVIS: Thank you, Judge.

4 MS. SCHWENDENER: And -- is it okay, I'll just state  
5 my objection for the record, Your Honor.

6 THE COURT: Yes.

7 MS. SCHWENDENER: Thank you.

8 THE COURT: Very much okay.

9 MR. DAVIS: Thank you.

10 THE COURT: All right. Okay. Basic information on  
11 that, that employment. Nothing more. Okay.

12 MS. SCHWENDENER: Yes.

13 MR. DAVIS: Yes.

14 (Before the jury:)

15 THE COURT: All right. Good morning. So we are  
16 going to have I believe Mr. Rogers take the stand again.

17 MR. DAVIS: Yes, Judge.

18 THE COURT: Step over. We are now back to the  
19 plaintiff's case, and plaintiff's case in chief. Mr. Rogers  
20 has been sworn. Even though it's been a few days, I don't  
21 reswear for this, for this seat. You do it once, and so -- but  
22 the same rules apply. Do you understand?

23 THE WITNESS: Good morning, Your Honor. How are you?

24 THE COURT: Fine.

25 THE WITNESS: Yes, I'm fine.

T. Rogers - direct by Davis

1 THE COURT: All right. Thank you. Proceed.

2 MR. DAVIS: Thank you, Your Honor.

3 TYRONE ROGERS, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

4 DIRECT EXAMINATION (Resum ed)

5 BY MR. DAVIS:

6 Q Good morning, Mr. Rogers.

7 A Good morning, Counselor. How are you today?

8 Q I'm fine.

9 A Good.

10 Q I think when we last left off yesterday we were talking  
11 about the fact we were in the August 17th, 2015 meeting. And  
12 we were talking about the fact that you essentially wanted Dr.  
13 Adams terminated at that meeting, correct?

14 A Yes.

15 Q And, in fact, you made a statement if she doesn't leave --  
16 I'm paraphrasing, get terminated tonight, I'm not going to be  
17 able to sleep; right?

18 A That sounds familiar, yes.

19 Q And the other board members were saying we need to go  
20 through a process. We can't just do it like that, right?

21 A Yes.

22 Q So, in fact, after August 17th isn't it true that you all  
23 went through what you described as a progression of employment  
24 actions against Dr. Adams that went all the way through until  
25 she basically left Harvey 152 in April on medical leave,

T. Rogers - direct by Davis

1 correct?

2 A Progression of acts?

3 Q Yes. That was your words. It was a progression. You  
4 don't recall saying that?

5 A Progression. I wouldn't --

6 Q Let me clarify.

7 THE COURT: Sir, let him -- yes, don't guess at  
8 anything please, sir.

9 MR. DAVIS: Sure.

10 THE COURT: All right. Go ahead.

11 THE WITNESS: Okay.

12 BY MR. DAVIS:

13 Q When I say progression, I mean in August you had the  
14 performance directives.

15 A Yes.

16 Q In October you talked about potential discipline. You had  
17 it on the agenda. The board met its potential discipline  
18 against superintendent for the October 19th, 2015 board  
19 meeting, right?

20 A Yes.

21 Q In November you took action regarding Dr. Adams, right?

22 A Yes.

23 Q In December you rescinded Dr. Nohelty's suspension,  
24 right?

25 A Yes.

T. Rogers - direct by Davis

1 Q In January you suspended Dr. Adams for several days,  
2 January 2016?

3 A I don't recall that. But yeah, I think it may have  
4 occurred.

5 Q Okay. All right. So and then by March Dr. Adams was  
6 taking a medical leave, correct?

7 A Yes.

8 Q So let's talk a little bit about Dr. Adams' predecessor.  
9 Who was her predecessor?

10 A Prior to Dr. Adams, it was Mr. Kellogg.

11 Q And you have a relationship with Mr. Kellogg?

12 A As a board member and superintendent, yes.

13 Q And what's the relationship?

14 A I'm a board member. He -- he was superintendent.

15 Q Right. But I mean you have a relationship now, right?  
16 You're employed by him, right?

17 A Oh, yes. I work for the City of Harvey.

18 Q Right. You've been knowing him for a number of years?

19 A Yes, sir.

20 Q Right. And you were on the board when he was the  
21 superintendent?

22 A Yes, sir, that's correct.

23 Q And, in fact, didn't you acknowledge that Mr. Kellogg was  
24 not a very good superintendent when he was the superintendent  
25 of Harvey 152?

T. Rogers - direct by Davis

1 A At one point, yes, he wasn't very good.

2 Q But, in fact -- and his performance evaluations, you  
3 participated in those, right?

4 A Yes, I did.

5 Q And 1 means unsatisfactory, right?

6 A Yes.

7 Q And, in fact, Mr. Kellogg in his last performance review  
8 in 2013, he got like maybe six 1's in different categories,  
9 right?

10 MS. SCHWENDENER: Objection.

11 THE COURT: The objection's overruled for reasons  
12 previously stated.

13 THE WITNESS: No way for me to remember that.

14 BY MR. DAVIS:

15 Q Okay. Well, do you remember that he frequently had a lot  
16 of 1's in his performance reviews?

17 A During the beginning of his tenure or the ending of his  
18 tenure?

19 Q Throughout.

20 A Not from me. I thought he was doing a great job at the  
21 end of his tenure.

22 Q So let me show you an exhibit. And this is going to be  
23 Plaintiff's Exhibit No. 52.

24 THE COURT: Any objection, Counsel?

25 BY MR. DAVIS:

T. Rogers - direct by Davis

1 Q Give me one second, Mr. Rogers. While I'm looking for  
2 this, let me ask a question. Isn't it true -- how about this,  
3 I'll give you the hard copy. Isn't it true Mr. Kellogg left  
4 the district in 2013?

5 A I don't recall the exact date, sir.

6 Q Okay. Well, do you recall that when he left the district,  
7 he received a financial severance package?

8 A Yes, sir, I do --

9 MS. SCHWENDENER: Objection, Your Honor.

10 THE COURT: Objection's overruled.

11 BY MR. DAVIS:

12 Q From the district?

13 A Yes, sir, I do.

14 Q Did he?

15 A Yes, sir.

16 MR. DAVIS: So since I have one copy here, I'm going  
17 to -- if I may publish this, Your Honor.

18 THE COURT: Well, first of all, you've got to show it  
19 to counsel.

20 MR. DAVIS: Okay.

21 THE COURT: Either the hard copy -- show it to  
22 counsel before you approach him.

23 MR. DAVIS: Okay. Sure.

24 MS. SCHWENDENER: I do have an objection, Your Honor.

25 THE COURT: All right. For the reasons previously

T. Rogers - direct by Davis

1 stated?

2 MS. SCHWENDENER: Yes, Your Honor.

3 THE COURT: All right. Over your objection the Court  
4 will allow it.

5 BY MR. DAVIS:

6 Q Do you recognize that?

7 A Yes, sir.

8 MR. DAVIS: Okay. May I publish, Your Honor.

9 THE COURT: Can you tell -- have him tell what it is  
10 before you publish it.

11 MR. DAVIS: Sure.

12 THE COURT: Particularly since they have an  
13 objection. You have to file your whole --

14 MR. DAVIS: Okay.

15 THE COURT: You have to go the whole route.  
16 Foundation.

17 BY MR. DAVIS:

18 Q What is this document, Mr. Rogers?

19 A It looks like a performance evaluation.

20 Q For who?

21 A For Mr. Kellogg.

22 THE COURT: Just move back to the mike.

23 THE WITNESS: A performance evaluation for Mr.  
24 Kellogg.

25 BY MR. DAVIS:

T. Rogers - direct by Davis

1 Q For what period?

2 A I think the year said 2013?

3 Q Yes.

4 A Yes, sir.

5 Q And you're familiar with this document? You were on the  
6 board in 2013 when he received this evaluation?

7 A Yes, sir, I was on the board in 2013. I mean --

8 Q I'm sorry. Were you finished?

9 A But as far as remembering that exact document, I don't.

10 Q Sure.

11 A Yes.

12 Q But you, you did him -- you did an evaluation of him?

13 A Yes, sir.

14 Q During that period.

15 A Yes, sir.

16 MR. DAVIS: May I publish, Your Honor.

17 THE COURT: And is there somebody who signed off on  
18 that document, Counsel? What else is there about the document?

19 MR. DAVIS: Eric Kellogg signed off on the document.

20 THE COURT: He said he doesn't remember anything  
21 about the document.

22 BY MR. DAVIS:

23 Q Well, isn't it customary -- tell us how the evaluation  
24 process works, Mr. Rogers.

25 A Okay. Normally superintendents are evaluated by the Board



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1 of Education on their performance and directives that they've  
2 been given by the board. If these characteristics that the  
3 superintendent exercises, if they work out good, they get a  
4 pretty good evaluation. If not, then the evaluation is usually  
5 reflective in a negative way.

6 Q Right. And the way the process works, if I understand it,  
7 the Board does its evaluations, members evaluate, rate the  
8 person in different categories; right?

9 A Yes, sir, that's correct.

10 Q Then you submit it to the employee for their review,  
11 right?

12 A Well, no, not exactly. What happens then is that the  
13 seven members of the board -- each evaluation is put together  
14 and the, and the tally is averaged out. They're given to the  
15 board president and the board secretary, and they tally the  
16 totals out. And then they come up with one substantial number,  
17 and then they sit down as a board and discuss the evaluation  
18 with that particular person that they're evaluating.

19 Q And to your knowledge when this evaluation, which I'm  
20 going to hand to you again, if it will help refresh you -- will  
21 this help refresh you if you can look through this?

22 A Sure, it would.

23 THE COURT: All right. Sir, just look it over for a  
24 while and then tell us when you've looked at it and if it helps  
25 you to remember what the overall evaluation was.

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1 THE WITNESS: Yes, Your Honor.

2 (Brief pause.)

3 THE WITNESS: Yeah, I'm familiar with it.

4 BY MR. DAVIS:

5 Q All right. You can put it to the side. Turn it over.

6 A Okay.

7 Q So are you familiar now with that document?

8 A Oh, yes.

9 Q And do you see in that document that -- and it's for the  
10 period of 2013, right?

11 A Yes, sir.

12 Q Isn't it true that Mr. Kellogg received a 1 rating, 1  
13 something in a number of categories?

14 A See, Attorney, nobody has any way of knowing which board  
15 members --

16 Q I'm sorry, Mr. Rogers.

17 THE COURT: Mr. Rogers, you have to answer the  
18 question.

19 BY MR. DAVIS:

20 Q Mr. Rogers, it's a yes, no question.

21 A No.

22 Q Would it help refresh you if you look at the document  
23 again and look at the individual averages for the categories?

24 A I saw them.

25 Q Did you see any 1's in there?

T. Rogers - direct by Davis

1 A I saw a lot of 2's.

2 Q I'm asking did you see any 1's in there?

3 A Yes.

4 Q Okay. Can you count the number -- can you tell us the  
5 number -- or give us an approximation. Was it more than  
6 one?

7 A I would say out of 40 you maybe have 6 that's one point  
8 something.

9 Q Thank you. So he got six. And do you happen to recall if  
10 Dr. Adams -- Dr. Adams never got a 1 in any category for the  
11 two years she was the superintendent, right?

12 A I'm not familiar with that. That's way too long to  
13 remember.

14 MR. DAVIS: Okay. We've previously published Dr.  
15 Adams -- Plaintiff's Exhibit No. 5, Judge.

16 THE COURT: All right.

17 MR. DAVIS: Actually this is the rotated document, so  
18 I'll have to do it with the camera. I want to ask the witness  
19 to have a look at the document.

20 THE COURT: I believe this has already been  
21 published.

22 MS. SCHWENDENER: It's already been published.

23 MR. DAVIS: Sure. Okay. Well --

24 THE COURT: All right. So anytime you're ready let  
25 me know.

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1 MR. DAVIS: Okay.

2 THE COURT: All right. So the witness has it and the  
3 jury.

4 BY MR. DAVIS:

5 Q So this is Dr. Adams' January 2015 performance evaluation,  
6 Mr. Rogers?

7 A Yes, sir.

8 Q It says superintendent performance goals?

9 A Yes.

10 Q You see that?

11 A That's what it says.

12 Q And as you explained, there's an average for each of these  
13 categories. Each category represents a different goal that the  
14 board has given the superintendent, right?

15 A Yes.

16 Q And the board members' rankings 1 to 4 are averaged to  
17 come up with this number right here?

18 A That's correct.

19 Q So we look through Dr. Adams' evaluation for 2013. We see  
20 the first page there's no 1's on there, right?

21 A Yes.

22 THE COURT: Excuse me, Counsel. Is this 2013?

23 THE WITNESS: 2015.

24 MR. DAVIS: This is 2015.

25 THE COURT: You said 2013.

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1 MR. DAVIS: I'm sorry. It was Mr. Kellogg. I  
2 misspoke if I said that.

3 THE COURT: All right. I just want to make sure we  
4 have got the date.

5 MR. DAVIS: Sure. Thank you, Judge.

6 THE WITNESS: Thank you, Judge.

7 BY MR. DAVIS:

8 Q No 1's on the first page?

9 A No 1's.

10 Q No 1's on the second page?

11 A Nope.

12 Q No 1's on the third page?

13 A No.

14 Q No 1's on the fourth page?

15 A No.

16 Q No 1's on the fifth page?

17 A No.

18 Q No 1's on the sixth page?

19 A No.

20 Q And, in fact, if we looked at a comparison of the two  
21 years Dr. Adams was evaluated, she didn't have 1's in any of  
22 those two years, right?

23 A You only showed me one year. That's all I can comment on.

24 Q Okay.

25 MR. DAVIS: I'd like to publish a comparison of the

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1 two years of Dr. Adams' performance evaluations, Plaintiff's  
2 Exhibit No. 6. The same data but it also includes another  
3 year.

4 MS. SCHWENDENER: No objection.

5 THE COURT: All right. Proceed, Counsel.

6 MR. DAVIS: I beg your pardon, Judge?

7 THE COURT: Proceed.

8 MR. DAVIS: Thank you.

9 BY MR. DAVIS:

10 Q So this says compare 2014 and '15 data?

11 A Yes.

12 Q Superintendent performance goals, right?

13 A Yes.

14 Q So one of these charts -- I can't tell which because  
15 everything's black, this was a color coded chart. But you can  
16 see the ratings between -- in each category between the two  
17 years. Each bar represents a different year, right?

18 A Yes.

19 Q And then you can see an average over in that category,  
20 correct?

21 A Yes.

22 Q So the first page doesn't show any 1's?

23 A No -- yes. Yes.

24 Q Where is the 1 at?

25 A In the first category there's a 1.5 and a 1.0.

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1 Q Where is that at?

2 A Under superintendent's performance goals --

3 THE COURT: Sir, you're not looking at the graphs.

4 You're looking at just the numbers set up for the graphs.

5 BY MR. DAVIS:

6 Q Right, you're looking at this. These are the rankings,  
7 not the graph.

8 A Okay. Okay.

9 Q That's just the scale. We're looking at these are her  
10 rankings. You see that?

11 A Yeah.

12 Q Any 1's?

13 A No, not on the rankings, no.

14 Q Thank you. Any 1's on the second page?

15 A It's kind of blurry.

16 Q Oh, yes. I'm sorry.

17 A No.

18 Q Any 1's on the third page?

19 A No.

20 Q Any 1's on this page?

21 A No.

22 Q Any 1's on the last page?

23 A No.

24 Q Thank you, Mr. Rogers. So one of the things that -- after  
25 July 10th and after August -- well, let's say after August 17th

T. Rogers - direct by Davis

1 you pretty much didn't want to -- let me put it this way: Dr.  
2 Adams continued to work in the district after the contract was  
3 rescinded, right?

4 A Yes.

5 Q She continued to work under her existing contract, right?

6 A Yes.

7 Q And so she was still the superintendent. She was still  
8 responsible for the day-to-day management of the district,  
9 correct?

10 A Yes.

11 Q And isn't it a fact that at one point you said a good  
12 board stays out of the way and let's the superintendent runs  
13 the district?

14 A Absolutely.

15 Q But in point of fact after August 17th, 2015 a number of  
16 Dr. Adams' decisions you and the board countermanded, correct?

17 A No.

18 Q Okay. So do you remember a recommendation from Dr. Adams  
19 regarding a Josie McDonald?

20 MS. SCHWENDENER: Objection.

21 MR. DAVIS: Let me rephrase the question, Judge.

22 THE COURT: All right.

23 BY MR. DAVIS:

24 Q Isn't it true Dr. Adams wanted to terminate an employee by  
25 the name of Josie McDonald in 2015?



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1 MS. SCHWENDENER: Objection.

2 THE COURT: Basis?

3 MS. SCHWENDENER: Relevance.

4 THE COURT: In what year?

5 MR. DAVIS: 2015, Judge. This is in the period.

6 THE COURT: Objection's overruled for now. If I  
7 believe it's irrelevant, I will so instruct the jury. Proceed.  
8 You may answer.

9 MR. DAVIS: Well, actually let to me correct the  
10 record, Judge. It's March 2016. She was still the  
11 superintendent.

12 THE COURT: All right. Same objection. Same ruling.  
13 Proceed.

14 BY MR. DAVIS:

15 Q So isn't it true that Dr. Adams gave a recommendation to  
16 the board to terminate Miss McDonald?

17 A I know of the termination and I know Miss McDonald, but  
18 I'm not sure of the date.

19 Q And you know Dr. Adams made a recommendation?

20 A Yes.

21 Q And isn't it true, Mr. Rogers, that you stated you didn't  
22 want to hear a recommendation from Dr. Adams, that you weren't  
23 interested in her recommendation?

24 A Yes.

25 Q And, in fact, you accused Dr. Adams of trying to get rid

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1 of some of you all's good people. Is that what you said?

2 A Yes.

3 Q And, in fact, Miss McDonald wrote in her rebuttal a  
4 written statement where she used a racial epithet against one  
5 of her supervisors. I'm not going to say the words. I don't  
6 want to play the tape. But you remember that incident?

7 MS. SCHWENDENER: Objection.

8 THE COURT: Objection sustained.

9 BY MR. DAVIS:

10 Q Didn't you laugh -- didn't you read Miss McDonald's  
11 written statement and laugh at the racial epithet that she used  
12 towards her supervisor?

13 MS. SCHWENDENER: Objection.

14 THE COURT: Sustained.

15 BY MR. DAVIS:

16 Q Did Miss McDonald make a racial epithet statement in her  
17 written rebuttal?

18 THE COURT: Sidebar --

19 MS. SCHWENDENER: Objection. Thank you. Sidebar.

20 Excuse us, ladies and gentlemen.

21 (Side bar proceedings out of the hearing of the jury:)

22 THE COURT: Is she coming in as a witness?

23 MR. DAVIS: No, she's not. But I think this is  
24 relevant to show --

25 THE COURT: How is that -- how is that --

T. Rogers - direct by Davis

1 MR. DAVIS: -- the animus that he had toward my  
2 client. If he let somebody --

3 THE COURT: All right. Maybe he had animus, but,  
4 Counsel, you can't just have any employee who isn't a  
5 superintendent just throwing in a name. You're throwing this  
6 in for prejudicial value, not just to show. You can ask some  
7 other types of questions to show his animus, but not going into  
8 having the jury now with another person's name in who's not  
9 part of the case. That's what hearsay is. That's what more  
10 prejudicial than probative is. It's denied. I'm going to tell  
11 them to strike and disregard all the questions regarding Miss  
12 McDonald.

13 MR. DAVIS: Okay.

14 MS. SCHWENDENER: Thank you.

15 (Before the jury:)

16 THE COURT: All right. Ladies and gentlemen, I have  
17 sustained the objection. And the Court has now determined that  
18 any of the questions that have been asked about Miss McDonald  
19 will be stricken. Do not consider that information and that  
20 testimony. Proceed.

21 BY MR. DAVIS:

22 Q Isn't it true that you all countermanded Dr. Adams -- let  
23 me back up.

24 Mr. Nohelty was in here the other day. You know Mr.  
25 Nohelty, right?

T. Rogers - direct by Davis

1 A Yes.

2 Q And he wanted to go on a trip to Boston to a conference.

3 You remember that?

4 A Vaguely. We take a lot of trips.

5 Q Right. But do you remember Dr. Adams saying she didn't  
6 think it was a good idea to send him on the trip because he was  
7 actually leaving the district, and it didn't make sense to  
8 spend money to send him on a trip? Do you remember that?

9 A No.

10 Q Okay. So you don't remember that you became upset that  
11 Dr. Adams was even -- that the Board was even considering Dr.  
12 Adams' recommendation?

13 A Yes.

14 Q Okay.

15 THE COURT: I'm sorry. Yes, you don't remember or  
16 yes, you do remember?

17 THE WITNESS: Yes, I do remember.

18 BY MR. DAVIS:

19 Q Thank you. So yesterday we talked about the changes to  
20 the summer school, right?

21 A Yes.

22 Q You remember that?

23 A Yes.

24 Q And one of the things you all charged Dr. Adams with in  
25 the performance directives from August, 17th, 2015 is that she

T. Rogers - direct by Davis

1 made the changes and she never alerted the Board that she was  
2 making the changes, right?

3 A Yes.

4 Q But, in fact, you have acknowledged that you did receive a  
5 newsletter with the changes to schedule in mid-June of that  
6 year, correct?

7 A Yes.

8 Q Isn't it true, Mr. Rogers, that you know the chart we've  
9 looked at now a number of times, right? The performance goals  
10 chart?

11 A Are you referring to the evaluation?

12 Q I'm referring to the bubble chart.

13 A Oh. Yes, I'm familiar with it.

14 Q Uh-hum. We all are at this point. And you described  
15 those goals as the district's goals, right?

16 A Yes, sir.

17 Q Well, isn't it true that when you were deposed in this  
18 case, you said those weren't the district's goals? Those was  
19 some goals the administrators created, quote, what you called a  
20 dog and pony show?

21 A I recall saying that.

22 Q So then they were a dog and pony show. You said the  
23 district didn't have nothing to do with that, right?

24 A No.

25 Q You said those weren't the board's goals. You didn't have

T. Rogers - direct by Davis

1 any recollection of participating in creating those goals. Is  
2 that what you said?

3 A That's correct.

4 Q But now they're the district's goals?

5 A They're -- the district goals and the contract goals are  
6 different --

7 MR. DAVIS: I'm sorry. I'll withdraw the question.  
8 No further questions. Thank you, Mr. Rogers.

9 THE COURT: All right.

10 THE WITNESS: Thank you, Counselor.

11 THE COURT: Thank you very much. All right. And  
12 counsel withdrew the question, and so you can disregard the  
13 answer. Anything defense?

14 MS. SCHWENDENER: Yes, Your Honor.

15 THE COURT: All right. Proceed.

16 MS. SCHWENDENER: Thank you.

17 THE COURT: Again, as Mr. Rogers is a defendant in  
18 the case, he's been called by plaintiff in their case in chief  
19 as an adverse witness. And so now in order to have -- prevent  
20 a two-step process or a five-step in Mr. Rogers' case, while  
21 he's up here, they're going to be allowed to also ask questions  
22 in their case in chief as if he was their witness. Proceed,  
23 Counsel.

24 MS. SCHWENDENER: Thank you, Your Honor.

25 CROSS-EXAMINATION

T. Rogers - cross by Schwendener

1 BY MS. SCHWENDENER:

2 Q Good morning, Mr. Rogers.

3 A Good morning, Counsel. How are you?

4 Q Good. Thanks. How long have you been a member of the  
5 Harvey Elementary District Board of Education?

6 A 13 and a half years.

7 Q And is that an elected or an appointed position?

8 A It's an elected position by the people of the State of  
9 Illinois.

10 Q Are you still a member of the Board of Education?

11 A Yes, I am.

12 Q And have you held that position continuously over the last  
13 13 and a half years?

14 A Yes, Counsel, I have.

15 Q Do you receive compensation for serving on the Board of  
16 Education?

17 A No.

18 Q Were you a member of the Board of Education during  
19 plaintiff's tenure as a superintendent?

20 A Yes, I was.

21 Q Did you vote to hire plaintiff as a superintendent?

22 A Yes, I did.

23 Q Now, I think it's already been established that plaintiff  
24 had a contract with the district, correct?

25 A Yes, she had a contract.

T. Rogers - cross by Schwendener

1 Q And do you recall the terms of that contract?

2 A Generally, yes. Yes.

3 Q Did plaintiff have any goals that she had to meet as part  
4 of her job?

5 A Yes.

6 Q And were those goals specific to plaintiff, or were those  
7 more general district wide goals?

8 A There were specific goals in the contract.

9 Q Directing your attention to February 23rd of 2015. At any  
10 point did the board vote to extend plaintiff's contract?

11 A Yes, Counsel, we did.

12 Q And can you please tell the jury how the discussion -- or  
13 the decision to extend plaintiff's contract came about.

14 A Sure. The Board was, was changing. And boards change  
15 every couple of years. We be getting new board members. And I  
16 think what occurred was the superintendent wanted to renew her  
17 contract before the new board got in and maybe get an increase  
18 in pay or benefits or something to that effect while the old  
19 board was still here.

20 So that's why the contract negotiation came up a year  
21 before the original contract had expired.

22 Q And how long did the board give an extension for?

23 A One year.

24 Q And was her contract being extended on the same terms as  
25 her existing contract?



T. Rogers - cross by Schwendener

1 A Yes, ma'am, it was.

2 Q And same terms including salary and benefits?

3 A Exact same contract. Yes, ma'am.

4 Q Now, before voting to extend plaintiff's contract, did the  
5 board make any formal findings about whether plaintiff had met  
6 her goals?

7 A No.

8 Q Directing your attention to the summer of 2015. At any  
9 time did plaintiff request to audit the district's finances?

10 A Yes.

11 Q Do you recall when that was?

12 A June of 2015.

13 Q And what was your response to plaintiff's request for the  
14 audit?

15 A My exact words were I thought she should be commended for  
16 looking out for the finances of the school district.

17 Q And it's already been established that plaintiff -- the  
18 board did give plaintiff permission to go out and get a  
19 proposal for the audit, correct?

20 A That's correct.

21 Q And we've heard the term RFP discussed quite a bit over  
22 the last couple days. Could you explain what that means.

23 A Sure. RFP is a, a method that businesses and boards use  
24 to solicit business or vendors or contracts to come in and do  
25 services. And it's placed -- normally placed in the newspaper.

T. Rogers - cross by Schwendener

1 And the lowest bidder will send their RFP back to the district,  
2 and they will select, the business manager will select the  
3 lowest bidder to come in and do -- fulfill those services.

4 Q Did plaintiff ever present the board with the proposal or  
5 RFP for the audit?

6 A Yes.

7 Q And do you recall when that was?

8 A That was in the summer of 2015.

9 Q Now, the other day counsel asked you yesterday if you had  
10 received an e-mail from plaintiff with the proposal for the  
11 audit. Do you recall how you received the proposal for the  
12 audit?

13 A Yes, ma'am.

14 Q And how was that?

15 A Well, my, my wife is a board member as well. And I  
16 remember seeing a copy that she had. I read her copy.

17 Q What was your response to the proposal?

18 A It was favorable. I thought it was a good thing.

19 Q Were you outraged over or -- well, strike that.

20 I understand that the proposal included an audit into  
21 the individual board members' finances, correct?

22 A Yeah, it did.

23 Q Were you outraged over that?

24 A My exact words were I thought it was good. I had nothing  
25 to hide. And no, there was no outrage. I thought it was a

T. Rogers - cross by Schwendener

1 good thing.

2 Q You're aware that plaintiff claims that you threatened  
3 her, correct?

4 A Yes, I'm aware.

5 Q What is your understanding of the alleged threat?

6 A She said something about in regards to I said I was --  
7 you're kicking -- itching for an ass kicking.

8 Q Did you ever say that?

9 A Never in my life.

10 Q Are you aware that plaintiff filed a police report against  
11 you?

12 A I'm well aware.

13 Q Have you ever seen this police report?

14 A No, I haven't.

15 Q The other day counsel showed you phone records indicating  
16 that you spoke with plaintiff on July 9th. Do you remember  
17 that?

18 A On or about the 9th, yes, ma'am.

19 Q Do you remember counsel showing you the phone records?

20 A Yes, I recall.

21 Q Would you as a board member speak with plaintiff on the  
22 telephone?

23 A Yes.

24 Q So it wouldn't be unusual for you to call plaintiff?

25 A No, it wouldn't be unusual.

T. Rogers - cross by Schwendener

1 Q Did you ever discuss the alleged threat with plaintiff?

2 A No.

3 Q Did you receive any disciplinary action by the board in  
4 response to the alleged threat?

5 A No.

6 Q Did you ever hear any other board members talking about  
7 this alleged threat?

8 A No.

9 Q Are you aware of any discussions amongst the other board  
10 members regarding the accusations plaintiff alleged against  
11 you?

12 A I'm not aware of any.

13 Q Are you aware of any discussion amongst the other board  
14 members regarding the police report plaintiff filed?

15 A No.

16 Q Now, at some point the board voted to rescind the one-year  
17 contract extension it had previously offered plaintiff,  
18 correct?

19 A That's correct.

20 Q Do you recall when that was?

21 A August of 2015.

22 Q Why did the board vote to rescind the one-year contract  
23 extension?

24 A We had had a meeting with our attorney. And it was -- it  
25 was told to us that, you know, we had that option.

T. Rogers - cross by Schwendener

1 Q Was it your understanding that the vote was ineffective?

2 A Yes. It was -- yes.

3 Q Going back to the February -- and going back to the  
4 February 23rd, 2015 meeting. Did the board ever make any  
5 findings that plaintiff had met her goals prior to extending  
6 the contract?

7 A No.

8 Q Did your vote to rescind the contract extension have  
9 anything to do with the audit plaintiff requested?

10 A No.

11 Q Did your vote to rescind the contract have anything to do  
12 with the threat plaintiff accused you of making?

13 A Not at all.

14 Q Did your vote to rescind the contract have anything to do  
15 with the police report plaintiff filed?

16 A No.

17 Q Are you aware of any discussions amongst the board members  
18 that based their vote to rescind the contract on the  
19 plaintiff's request for an audit?

20 A No.

21 Q Are you aware of any discussions by any board members that  
22 based their vote to rescind the contract on the threat  
23 plaintiff accused you of making?

24 A No.

25 Q Are you aware of any discussions by any board members that

T. Rogers - cross by Schwendener

1 based their vote to rescind the contract on the police report  
2 plaintiff filed?

3 A None.

4 Q Directing your attention to August 17th of 2015. At any  
5 point did the board issue performance directives to plaintiff?

6 A Yes.

7 Q And what are performance directives?

8 A It's a, it's a, a way of measuring, you know, how well the  
9 superintendent is doing. So we are kind of looking for some  
10 specific bullet points that we want the superintendent to carry  
11 out.

12 Q Counsel asked you some questions earlier about the  
13 changing -- that plaintiff had changed the summer school  
14 schedule. Do you recall any changes that plaintiff had made to  
15 the summer school schedule without the board's knowledge?

16 A Yes.

17 Q Could you please explain what you recall.

18 A Yes. The counsel made mention that I saw it in a  
19 newsletter, but I did see it in a newsletter, but it was after  
20 the fact that the damage had already been done. The plaintiff  
21 had already rescheduled the days and the times that we've  
22 normally had in our school district for many years. And the  
23 board didn't know anything about it. And there was reason  
24 being is because we normally go four days in summer school,  
25 and, and the custodian -- we don't have to pay the janitorials

T. Rogers - cross by Schwendener

1 and the teachers and everything on that Friday.

2 So -- but none of that was discussed with the board.  
3 And the board is not in a habit of getting into the day-to-day  
4 operations, but we would be like to kept abreast when there's  
5 an emergency or something of that magnitude going on in the  
6 district.

7 Q Did the issuing of the partial performance directives have  
8 anything to do with the plaintiff's request for an audit?

9 A No.

10 Q Did the issuing of partial performance directives have  
11 anything to do with the threat plaintiff accused you of making?

12 A No.

13 Q Did the issuing of the partial performance directives have  
14 anything to do with plaintiff's filing of a police report?

15 A No, it didn't.

16 Q Did you vote to issue partial performance directives to  
17 plaintiff?

18 A Yes, I did.

19 Q Did your vote to issue the partial performance directives  
20 to plaintiff have anything to do with her request for an audit?

21 A No, ma'am, they did not.

22 Q Did your vote to issue the partial performance directives  
23 have anything to do with the alleged threat she accused you of?

24 A No, ma'am, it did not.

25 Q Did your vote to issue the performance directives have

T. Rogers - redirect by Davis

1 anything to do with the police report plaintiff filed?

2 A No, not at all.

3 Q Are you aware of any discussions by any other board  
4 members that based their vote to issue the partial performance  
5 directives on the request for an audit?

6 A No, I'm not aware.

7 Q Are you aware of any discussion amongst any other board  
8 members that based their vote to issue the partial performance  
9 directives on the alleged threat plaintiff accused you of?

10 A No, ma'am.

11 Q Are you aware of any discussion by any other board members  
12 that based their vote to issue the partial performance  
13 directives on plaintiff's filing of a police report?

14 A None.

15 MS. SCHWENDENER: Thank you. I don't have anything  
16 further.

17 THE COURT: Thank you, Counsel. Questions from the  
18 plaintiff?

19 MR. DAVIS: Yes, Judge.

20 THE COURT: Proceed, Mr. Davis.

21 REDIRECT EXAMINATION

22 BY MR. DAVIS:

23 Q You said the board before the February voting for the  
24 extension, February 23rd, 2015, never evaluated Dr. Adams  
25 regarding the performance goals; correct?



T. Rogers - redirect by Davis

1 MS. SCHWENDENER: Objection.

2 THE COURT: Basis?

3 MS. SCHWENDENER: Mischaracterizes the witness'  
4 testimony.

5 THE COURT: Adverse testimony. He can answer.  
6 Overruled. Answer please.

7 THE WITNESS: Can you repeat that again.

8 BY MR. DAVIS:

9 Q You said you all voted for an -- to grant an extension  
10 February 23rd, 2015, right?

11 A Yes.

12 Q You just said that you never evaluated Dr. Adams before  
13 that to see if she was reaching the district's goals, is that  
14 what you just said?

15 A No.

16 Q Okay. Did you all evaluate Dr. Adams whether she was  
17 accomplishing the district goals before voting for the  
18 extension?

19 A No.

20 Q Okay. I'm confused. But maybe I can clear it up.

21 A Okay.

22 Q We just saw Dr. Adams' performance evaluation, right?

23 A Yes.

24 Q That said January 2015 on it?

25 A It had the year 2014-15. I'm not sure if it said January.

T. Rogers - redirect by Davis

1 Q That was the comparator. The one before that said  
2 January 2015, right? Plaintiff's exhibit --

3 A Can I see it? Can I see it again, Counsel.

4 Q Sure.

5 MR. DAVIS: May I, Judge.

6 THE COURT: You may.

7 THE WITNESS: Yes, sir, this evaluation says  
8 January 2015.

9 BY MR. DAVIS:

10 Q All right. And the first page, what's the title of the  
11 document? Read that, please. Very top.

12 A The first page states part one, superintendent performance  
13 goals.

14 Q Thank you. And you participated in this evaluation,  
15 right?

16 A Yes, sir.

17 Q And the whole board participated in it, right?

18 A Yes, sir.

19 Q And this is the only evaluation that 152 uses for  
20 superintendents, right?

21 A Annually, yes.

22 Q Yes. They don't use any other evaluation, right?

23 A No.

24 Q You said that you wanted the audit, right?

25 A Yes.

T. Rogers - redirect by Davis

1 Q In fact, didn't you appear at a board meeting, and we've  
2 already heard this tape --

3 A Okay.

4 Q -- where you said you were shocked when you got the RFP on  
5 July 9th because you saw that Dr. Adams included in there  
6 investigating board members, and you weren't comfortable. You  
7 didn't have time to be audited. You remember that?

8 A No.

9 Q You don't remember saying that?

10 A I wasn't shocked, first of all.

11 Q Just answer my question. Do you remember saying it or did  
12 you not say it?

13 A I did not say that, no.

14 MR. DAVIS: Playing -- may I, Judge.

15 THE COURT: Yes, you may.

16 MR. DAVIS: -- Plaintiff's Exhibit No. 71. Volume  
17 VN810186. It is from the July 22nd, 2015 board meeting.

18 THE COURT: All right. Tell me when you're cued up.

19 (Whereupon, said tape was played in open court.)

20 BY MR. DAVIS:

21 Q Was that you, Mr. Rogers?

22 A Yes, sir.

23 Q So you said the summer school schedule you all got the  
24 information after the fact. Is that what you said?

25 A Yes.

T. Rogers - redirect by Davis

1 Q But didn't you just admit a few minutes earlier you got  
2 the changes to the summer school in mid-June?

3 A No.

4 Q So you didn't just say 20 minutes ago -- you remember a  
5 few minutes ago you said you did get the schedule changes. You  
6 got the newsletter, right?

7 A I got the newsletter.

8 Q And I asked you when you got the newsletter. Did you get  
9 it in mid-June 2015. You don't remember that?

10 A You didn't ask me when I got it.

11 Q Okay. When did you get it?

12 A I don't recall.

13 Q Isn't it true that you've previously testified under oath  
14 that you received it, and it's dated June 15th through the  
15 19th? Didn't you previously testify about that?

16 A I testified that I got the newsletter. Now, as far as the  
17 dates, the newsletter was talking about summer school. I don't  
18 know if it was June or July or May, what.

19 THE COURT: Sir, there's no question pending.  
20 Proceed.

21 BY MR. DAVIS:

22 Q So you previously testified you got the newsletter, right?

23 A Yes, sir.

24 Q And the newsletter has on it when it was sent out, right?  
25 It shows the week it was sent out?

T. Rogers - redirect by Davis

1 A Normally it does, yes.

2 Q And, in fact, you were handed the newsletter in your  
3 deposition to look at it, right?

4 A I don't recall.

5 Q Okay. Well, do you recall that the newsletter had week of  
6 6/15 through 19?

7 A No, sir.

8 MR. DAVIS: Okay. I'd like to go to Plaintiff's  
9 Exhibit 58. This is Mr. Rogers' deposition. I previously  
10 disclosed these pages to counsel. And --

11 THE COURT: All right. Any objection? I believe  
12 this has already been seen.

13 MS. SCHWENDENER: Page 58?

14 THE COURT: First of all, any objection to the  
15 deposition? Is this a deposition?

16 MS. SCHWENDENER: Well, this is a deposition. Yes, I  
17 would -- I'm not sure what page counsel is referring to, but  
18 yes, I would have an objection for the record.

19 THE COURT: Well, right now he's trying to impeach  
20 him, so your objection's overruled. And I'm not going to  
21 publish an impeachment yet unless it's already been all shown  
22 to the jury. Proceed.

23 MR. DAVIS: I believe we, we haven't looked at this  
24 specific part of his --

25 THE COURT: Well, he'll have it in front of him, if

T. Rogers - redirect by Davis

1 you wish him to.

2 MR. DAVIS: Sure.

3 THE COURT: You don't even need it to impeach him.

4 Just read what it is. Make sure he took the dep and knows what  
5 he's doing.

6 BY MR. DAVIS:

7 Q Okay. You see what I have on the screen, page 97 at line  
8 16, Mr. Rogers?

9 A Yes.

10 Q Can you read it to yourself.

11 THE COURT: Wait. Counsel, are you impeaching him or  
12 refreshing his recollection?

13 MR. DAVIS: I'm impeaching him, Judge.

14 THE COURT: Then, Counsel, he shouldn't be reading  
15 it.

16 MR. DAVIS: Okay.

17 THE COURT: You should just read it. That's the way  
18 you impeach.

19 MR. DAVIS: Okay. Great, Judge. Thank you.

20 BY MR. DAVIS:

21 Q Okay. And one of the -- this is the question. Okay. And  
22 one of the things that you all disciplined Dr. Adams about was  
23 that she made changes to the summer school schedule without  
24 getting prior board approval, is that correct?

25 Answer: That was just one of many.

T. Rogers - redirect by Davis

1 Question: So the answer to my question is yes.

2 Answer: Yes.

3 Question: That was one. I'm going to hand you -- I think  
4 I've already given you a superintendent's weekly newsletter.

5 Answer: Uh-hum.

6 Question: For June 15th to June 19th. Do you have that?

7 Yes, sir.

8 And the summer school started on July 1st, correct? I'm  
9 asking you when summer school -- I'm not asking you about the  
10 documents yet. Summer school started on July 1st, correct?

11 I don't know.

12 Okay. Well, you received a copy of that newsletter in  
13 your hand, right?

14 Answer: I don't remember. I get them every week. I  
15 don't know. I may have.

16 Okay. Well --

17 THE COURT: Read what you are seeing. I may have.  
18 What do you say after that?

19 MR. DAVIS: So --

20 THE COURT: Counsel, you are not reading the whole  
21 sentence.

22 MR. DAVIS: I'm sorry. It says okay --

23 THE COURT: 16 and 17. You stopped at I may have on  
24 16.

25 MR. DAVIS: Oh, I'm sorry. I may have. I don't

T. Rogers - redirect by Davis

1 know.

2 THE COURT: No. "I may have. I may not."

3 MR. DAVIS: Oh, I'm sorry. I missed that, Judge.

4 THE COURT: Yes, you don't want to miss that I don't  
5 think.

6 BY MR. DAVIS:

7 Q Okay. I may have. I may not have. Okay. That's what  
8 you said, right?

9 So let's do it this way, Mr. Rogers: We also talked  
10 about the fact that you commended Dr. Adams at a board meeting  
11 because in the newsletter she congratulated you being the only  
12 male on the board for Father's Day, right?

13 A Yes.

14 Q You remember that?

15 A Yes.

16 Q And so you acknowledge at this board meeting I got the  
17 newsletter. I was so proud to see that you included in there  
18 Happy Father's Day to Mr. Rogers, right?

19 A Yes, I recall that.

20 Q Okay. So in order to know that, you had to get the  
21 newsletter, right? You was commending her because you read it  
22 in the newsletter, right?

23 A That's correct.

24 Q You said that Attorney Izzo gave you the option -- gave  
25 the board, said you got the option to not renew the contract or



T. Rogers - redirect by Davis

1 to -- I'm sorry, rescind the extension, the contract extension,  
2 correct? That's what you just testified to?

3 A That's what I just testified to.

4 Q Okay. So you had the option not to rescind the contract.  
5 The board, you meaning the board had the option not to rescind  
6 the contract, correct?

7 A As an individual, yes.

8 Q As a board you had the option not to rescind the contract,  
9 right?

10 A I can't speak on behalf of the entire board. I'm only one  
11 vote.

12 Q You just said he presented to the board that you all had  
13 the option to rescind the contract?

14 A That's correct.

15 Q So the converse of that is you had the option not to  
16 rescind the contract as a board, right?

17 A Sir, I'll repeat. I'm only one person. I've only got one  
18 vote.

19 MR. DAVIS: No further questions, Judge.

20 THE COURT: All right. Any questions further from  
21 defense?

22 MS. SCHWENDENER: Yes, Your Honor.

23 THE COURT: Proceed.

24 MS. SCHWENDENER: Thank you. Judge, I'd like to show  
25 what's been previously marked as Plaintiff's Exhibit 1.

T. Rogers - recross by Schwendener

1 THE COURT: One second. And that's been published.  
2 I believe that's the contract, is that correct?

3 MS. SCHWENDENER: Correct, Your Honor.

4 THE COURT: All right. Give me one second. All  
5 right. Proceed.

6 RECROSS-EXAMINATION

7 BY MS. SCHWENDENER:

8 Q Mr. Rogers, if you could take a look at paragraph No. 3.

9 THE COURT: Well, you're going to have to move it.  
10 Paragraph with the number 3?

11 MS. SCHWENDENER: Yes.

12 THE COURT: The first one under duties?

13 MS. SCHWENDENER: Number 3.

14 THE COURT: All right. Paragraph 3. Proceed.

15 BY MS. SCHWENDENER:

16 Q Mr. Rogers, do you recognize this?

17 A Yes, I do.

18 Q Okay. At any point did the board make a formal finding  
19 that plaintiff had met goal one under paragraph three?

20 A No --

21 THE COURT: Wait. We need some temporal, some time  
22 period.

23 BY MS. SCHWENDENER:

24 Q Prior to February 23rd of 2015, did the board ever make a  
25 finding that plaintiff had met goal No. 1?

T. Rogers - further redirect by Davis

1 A No.

2 Q Prior to February 23rd of 2015 did the board ever make a  
3 finding that plaintiff had met goal No. 2?

4 A No.

5 MS. SCHWENDENER: Thank you. No further questions.

6 MR. DAVIS: Redirect, Judge.

7 THE COURT: Yes, go ahead. Leave that same doc up  
8 there, Counsel.

9 MR. DAVIS: Yes, please leave that.

10 THE COURT: Leave the same document up, Counsel.

11 MS. SCHWENDENER: Sure. Sorry, Judge.

12 MR. DAVIS: You have the next page?

13 THE COURT: All right. Thank you both.

14 MR. DAVIS: Thank you.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. DAVIS:

17 Q Mr. Rogers, look at -- this is the same document, same  
18 contract. Underneath B read the paragraph there what it says.

19 A Yes, sir. It says, Further, the superintendent and the  
20 board shall consult in no later than October 1st, 2013 and  
21 June 1st of each contract year thereafter in order to manually  
22 determine whether --

23 THE COURT: Mutually. Mutually. I know the reading  
24 is a little tough.

25 THE WITNESS: I'm sorry. I'm sorry. Mutually

T. Rogers - further redirect by Davis

1 determine whether such goals should be amended or additional  
2 goals needed to be included. Any amendments or additions  
3 mutually agreed upon by the parties shall be attached thereto  
4 and incorporated as part of this agreement.

5 BY MR. DAVIS:

6 Q So based on this agreement and what you just read, on June  
7 1st, 2014 the board met with Dr. Adams to discuss her  
8 performance goals, correct?

9 A I really don't recall.

10 Q So it could have happened?

11 A It could not have happened.

12 Q Do you have any independent knowledge that that didn't  
13 happen?

14 A I don't, I don't know for certain, sir.

15 Q It's a yes or no question, Mr. Rogers.

16 A I'm not -- I, I don't remember.

17 THE COURT: I don't know is an option.

18 MR. DAVIS: Okay.

19 THE WITNESS: I don't recall.

20 BY MR. DAVIS:

21 Q Do you have any reason to believe that the board violated  
22 its own contract and on June 1st, 2014 didn't sit down with Dr.  
23 Adams to discuss her performance goals?

24 MS. SCHWENDENER: Objection.

25 THE COURT: Overruled.

1 THE WITNESS: I really don't have any reason to  
2 believe that the board violated the contract.

3 MR. DAVIS: Thank you, Mr. Rogers.

4 MS. SCHWENDENER: No questions.

5 THE COURT: You're done, Mr. Rogers.

6 THE WITNESS: Okay.

7 THE COURT: All right. Watch your step.

8 (Witness excused.)

9 THE COURT: All right. I think this is a good time  
10 for a break. All rise.

11 (Jury excused.)

12 THE COURT: Anything on the record -- you're calling  
13 one of the Johnsons next?

14 MR. DAVIS: Yes.

15 THE COURT: All right. Which one so they know?

16 MR. DAVIS: Gloria first and then Betty.

17 THE COURT: All right. More than likely we'll get  
18 Gloria done. See how long it takes, then we'll take a lunch.

19 MR. DAVIS: Okay.

20 THE COURT: All right. So that's -- we'll get one  
21 before lunch and one after.

22 MR. DAVIS: Okay.

23 THE COURT: All right. Anything else? No?

24 MS. SCHWENDENER: No, Your Honor.

25 THE COURT: All right. Five minutes. Thank you.

G. Johnson - direct by Davis

1 MR. DAVIS: Thank you, Judge.

2 THE COURT: 10.

3 (Short break taken.)

4 (Before the jury:)

5 GLORIA JOHNSON, PLAINTIFF'S WITNESS, DULY SWORN

6 THE COURT: Proceed, Counsel.

7 MR. DAVIS: Thank you, Your Honor.

8 THE COURT: Keep your voice up.

9 DIRECT EXAMINATION

10 BY MR. DAVIS:

11 Q Good morning, Miss Johnson. How are you?

12 A Good morning, Counselor. I'm well. Thank you.

13 Q Thank you. How long have you been on the board for Harvey  
14 152?

15 A 25 years.

16 Q So you were serving on the board in 2015, February 2015?

17 A Yes.

18 Q And you were on the board in July of 2015?

19 A Yes.

20 Q After July 10th, August. Yes. Okay. When did you find  
21 out about the police report that Dr. Adams had made regarding  
22 Mr. Rogers?

23 A Find out about it? I don't recall the exact date when I  
24 found out.

25 Q Okay. Can I show you something that -- well, let me do it

G. Johnson - direct by Davis

1 this way --

2 THE COURT: Excuse me, Counsel. I'm sorry. Can we  
3 have a little more clarification on that term found out about  
4 it.

5 MR. DAVIS: Okay.

6 THE COURT: Thank you.

7 BY MR. DAVIS:

8 Q Are you aware that Dr. Adams filed a police report saying  
9 that Mr. Rogers threatened her?

10 A I heard --

11 Q Yes.

12 A -- that a police report was filed.

13 Q Right. And in connection with this case, didn't you  
14 answer certain written questions? They call them  
15 interrogatories.

16 A No.

17 Q Okay. You don't remember an interrogatory that said when  
18 did you find out about Dr. Adams filing a police report?

19 A I don't recall.

20 MR. DAVIS: Okay. Well, I'd like to show the witness  
21 the --

22 THE COURT: Exhibit what?

23 MR. DAVIS: Exhibit 63, Judge.

24 THE COURT: All right. Exhibit 63. And to refresh  
25 her recollection, is that correct?

G. Johnson - direct by Davis

1 MR. DAVIS: Well, actually it's a written exhibit,  
2 so --

3 THE COURT: Well, first, first it's because she said  
4 she didn't recall. You were going to try to refresh -- let her  
5 see it just to refresh her recollection?

6 MR. DAVIS: Well, I don't think I have to do that,  
7 Judge. I think it's a sworn statement by a party.

8 THE COURT: Counsel. Counsel, you don't, but you  
9 don't even have to have her on the stand if you want to do  
10 that. If you're going to ask her about the interrogatories,  
11 you at least have to show them to her.

12 MR. DAVIS: Okay. No problem, Judge.

13 BY MR. DAVIS:

14 Q So, Mrs. Rogers, can you see the screen?

15 A Yes, I can.

16 Q And you see where it says No. 5?

17 A Yes, I do.

18 Q And you can read it to yourself what it says.

19 A All right. I, I -- it stops at July 10. Is there any  
20 more to that answer?

21 Q Well, I was talking about the first paragraph.

22 A Oh, yes.

23 Q The first paragraph basically asks -- it's a question,  
24 right?

25 A I see it, yes.



G. Johnson - direct by Davis

1 Q And it's asking when did you find out that Dr. Adams made  
2 a police report saying that Tyrone Rogers threatened her,  
3 saying she was itching for -- you can read the rest.

4 A Right. Right.

5 Q Okay. And so the answer, and it says defendant Gloria  
6 Johnson. You can read that part?

7 A Yes, I can.

8 Q And can you read -- are you now refreshed on your answer?  
9 Is this your answer?

10 A It could very well be my -- yes.

11 Q Okay. So what does it say? When did you find out?

12 A May I read from this?

13 Q Sure.

14 A Defendant Gloria Johnson states that she does not have  
15 knowledge that plaintiff filed a police report per se with the  
16 Harvey Police Department. On July 10th, 2015 Gloria Johnson  
17 was told by plaintiff that Tyrone Rogers allegedly told  
18 plaintiff she was itching for an ass kicking. On or around  
19 July 10th, defendant Gloria Johnson states that the Harvey  
20 Police Department were called to the school district and that  
21 she does not know who called them. On or around July 12th,  
22 defendant was told by plaintiff that plaintiff was going to  
23 make a complaint for the record and that plaintiff was not  
24 intending to press charges against Tyrone Rogers. I do recall.

25 Q All right. Thank you. Miss Rogers -- I'm sorry.

G. Johnson - direct by Davis

1 Miss Johnson. I apologize.

2 So when you found out -- when Dr. Adams told you on  
3 July 12th what had happened, did you tell -- you were the  
4 president of the board at that time?

5 A Yes.

6 Q And did you then -- you told Dr. Adams that you would let  
7 the other board members know about the incident, right?

8 A I told Dr. Adams that I would first contact Mr. Rogers.

9 Q And then you would let them --

10 A I would not inform board members. I had to speak with him  
11 first.

12 Q Okay. Did you contact Mr. Rogers?

13 A We made a conversation over the weekend.

14 Q Okay.

15 A And he denied the allegation.

16 Q Okay. Did you then communicate with the other board  
17 members about the incident?

18 A No. Because he denied that he made any inappropriate  
19 statements.

20 Q Okay. So you never told your -- you're the board  
21 president. One of the members had a police report for a  
22 violent threat, and he denied it. And you just never thought  
23 it should be broached with other board members, is that your  
24 testimony?

25 A It was -- that's my testimony.

G. Johnson - direct by Davis

1 Q Okay. You voted on August 17th, 2015 to rescind Dr.  
2 Adams' contract extension, right?

3 A Yes.

4 Q And, in fact, you all had a meeting and you were talking  
5 about it. And again, you were the board president then, right?

6 A Yes.

7 Q And you were debating among yourselves what to tell Dr.  
8 Adams. And you -- right? You remember that?

9 A I wouldn't say debating among ourselves. Remember I was a  
10 chairperson. We did have a discussion.

11 Q Right. And the discussion was what do we tell Dr. Adams.  
12 You had already decided you were going to rescind the  
13 extension, right?

14 A We were -- okay. Give me the dates when you say we were  
15 deciding.

16 Q August 17th, 2015.

17 A We were informed in July that we were -- it was not valid.

18 Q I'm sorry. I'm sorry. I'm talking about August 17th.

19 A And you say we had already decided.

20 Q Well, you all were discussing?

21 A Discussing.

22 Q Let me phrase it this way.

23 A Right.

24 THE COURT: Excuse me too. Again, you can't talk  
25 over each other. You have to ask a specific question. All

G. Johnson - direct by Davis

1 right. And, ma'am, wait until he asks. If you don't  
2 understand it, tell him you don't understand. Proceed.

3 BY MR. DAVIS:

4 Q Didn't you tell the other board members we need to bring  
5 her back in here and tell her that the contract extension was  
6 ineffective?

7 A During -- yes, during executive session.

8 Q Right. And at one point you said you were going to tell  
9 her that it was illegal. When you all voted to extend it, it  
10 was illegal. Isn't that what you said?

11 A I don't recall the exact words, but could have.

12 Q And other board members, Dr. McCaskill said, well, oh,  
13 don't say illegal. I don't do illegal stuff, right?

14 A I don't recall that.

15 Q Okay. Well, let me show you the transcript of the -- or  
16 let me just play the tape of that meeting.

17 THE COURT: You have a number just for reference,  
18 Counsel?

19 MR. DAVIS: Yes. This is -- this is Plaintiff's  
20 Exhibit 72. This is the recording made of, of the board  
21 meeting.

22 THE COURT: Of what date?

23 MR. DAVIS: August 17th, 2015.

24 THE COURT: All right. Thank you. Any objection?

25 MS. SCHWENDENER: No objection.

G. Johnson - direct by Davis

1 THE COURT: Other than the one from the original  
2 motion?

3 MS. SCHWENDENER: Other than previously stated, yes.

4 THE COURT: All right. Proceed. Proceed, Counsel.

5 MR. DAVIS: Thank you, Judge.

6 (Whereupon, said tape was played in open court.)

7 BY MR. DAVIS:

8 Q Okay. So that was you saying we need to tell Dr. Adams  
9 that we're going to rescind the contract, right, basically?

10 A Yes.

11 Q Okay. And then here's another part. Here's the part  
12 where we were talking about you all were debating or  
13 discussing.

14 THE COURT: Is this the same date, Counsel?

15 MR. DAVIS: Yes, same day. Same exhibit, Your Honor.

16 THE COURT: Proceed.

17 (Whereupon, said tape was played in open court.)

18 BY MR. DAVIS:

19 Q You refreshed your -- on that conversation now,  
20 Miss Johnson?

21 A Yes.

22 Q And who was that -- that was you talking, right?

23 A That was me talking. I used the term illegal, which was  
24 an inappropriate word, and it was corrected.

25 Q Okay. And that was Dr. McCaskill saying I don't do

G. Johnson - direct by Davis

1 illegal stuff?

2 A I think so.

3 Q And that was Linda Hawkins saying --

4 A I don't know all the rest now.

5 Q Okay. Well, who was it that said when you all said you  
6 were going to tell her that it was ineffective, see ya later  
7 alligator?

8 A Don't know. I heard that. I don't know.

9 Q You heard it, though, right?

10 A Yes.

11 Q Okay. But you don't know which -- that was a board  
12 member, right?

13 A I think. Only board members were -- the only people  
14 should have been in there should have been board members.

15 Q Right. So one of the board members when you all said,  
16 hey, we're going to tell her this extension is over, see ya  
17 later alligator. Pretty gleefully?

18 A Yes.

19 Q Yes. Okay. You knew working with Tyrone Rogers that he  
20 was pretty mad about -- after July 10th he wanted Dr. Adams  
21 out, right?

22 A I, I don't know.

23 Q You attended --

24 A I don't re -- I cannot say that.

25 Q Okay. You attended board meetings with Mr. Rogers?

G. Johnson - direct by Davis

1 A Yes.

2 Q And you were here when he was testifying, right?

3 A Yes.

4 Q And he testified and said he came to the board meeting on  
5 August 17th and he didn't want to do no discipline. He just  
6 wanted her fired. Didn't you hear him say that?

7 A You played some tapes, and I heard what he said then, sir.  
8 I don't recall all of the dates.

9 Q Okay. But I'm talking about you recall sitting in the  
10 courtroom. You've been here. You heard Mr. Rogers saying --

11 A But I don't know the date.

12 THE COURT: Excuse me, ma'am. You have to wait until  
13 he finishes his question.

14 THE WITNESS: Okay.

15 THE COURT: His question, not his testimony.

16 MR. DAVIS: Okay. All right, Judge.

17 BY MR. DAVIS:

18 Q Let me try to make it focused before I get in trouble.

19 Didn't -- wouldn't you say Mr. Rogers after July 10th  
20 didn't believe Dr. Adams should be in the job anymore?

21 MS. SCHWENDENER: Objection.

22 THE COURT: Form of the question sustained.

23 BY MR. DAVIS:

24 Q Didn't you attend meetings?

25 A Yes.

G. Johnson - cross by Schwendener

1 Q Where he said that? Ma'am?

2 A I don't recall. Sir --

3 Q Well, that's okay.

4 THE COURT: No explanation yet until your lawyers get  
5 to -- they'll get to ask you questions. All right, ma'am? All  
6 right.

7 BY MR. DAVIS:

8 Q So my final question on that point is would you  
9 characterize after July 10th Tyrone Rogers as being upset with  
10 Dr. Adams?

11 A Yes.

12 MR. DAVIS: Thank you, Mrs. Johnson. I think that's  
13 all I have, ma'am. Thank you.

14 THE COURT: All right. Thank you very much, Counsel.  
15 Defense. Again, this is a witness that is named in the case as  
16 a defendant. You just heard adversarial questions, gently  
17 adversarial questioning, and -- but still the defendant is  
18 going to also combine her testimony that they would have called  
19 her for in their case in chief instead of us going back and  
20 forth. Proceed.

21 MS. SCHWENDENER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. SCHWENDENER:

24 Q Good morning, Mrs. Johnson.

25 A Good morning.



G. Johnson - cross by Schwendener

1 Q Where do you live?

2 A Harvey, Illinois.

3 Q And are you still currently a member of the Board of  
4 Education?

5 A Yes.

6 Q And when did you first become a member?

7 A 1993 I was appointed, and I've been reelected six  
8 consecutive four-year terms.

9 Q Are you compensated for your services as a member of the  
10 Board of Education?

11 A No.

12 Q And you've also been named as a defendant in this matter,  
13 correct?

14 A Yes.

15 Q Did you vote to hire the plaintiff in July of 2013?

16 A Yes.

17 Q Do you recall the length of her initial contract?

18 A Three years.

19 Q Directing your attention to February 23rd of 2015. Do you  
20 recall being at a board meeting that night?

21 A Yes.

22 Q And at that meeting on February 23rd of 2015 did the board  
23 vote to extend plaintiff's contract?

24 A Yes.

25 Q Do you recall the terms of that extension?

G. Johnson - cross by Schwendener

1 A No.

2 Q You heard testimony earlier that the extension was for one  
3 year. Do you have any reason to disagree with that?

4 A No.

5 Q Did you personally vote for the one-year contract  
6 extension?

7 A Yes.

8 Q And I take it you know Tyrone Rogers?

9 A Yes.

10 Q And how do you know him?

11 A As a colleague on the school board.

12 Q And at some -- directing your attention to July 10th of  
13 2015. Did you become aware that plaintiff claims that Mr.  
14 Rogers allegedly threatened her?

15 A Yes.

16 Q When did you first hear about this alleged threat?

17 A On July 10th I spoke with the plaintiff on the phone.

18 Q And how -- did plaintiff contact you or did you contact  
19 her?

20 A There were two or three calls made because I happened to  
21 be at a place where I could not speak when I received the call.  
22 So I don't know if I returned or she returned, but we spoke to  
23 each other a couple of times that day.

24 Q And what did plaintiff tell you?

25 A She told me about the inappropriate statement made to Mr.

G. Johnson - cross by Schwendener

1 Rogers to her. And she -- I don't -- I cannot say the verbatim  
2 words, but I got the feeling she wanted to know if it was okay  
3 with me -- she said she was going to have a police report filed  
4 for the record. But she seemed to have been concerned about  
5 whether to -- whether I had any objection to it. And she also  
6 stated that she would not press charges. I had no objections  
7 to her filing. As a matter of fact, I felt that she should do  
8 whatever would make her feel comfortable at the time.

9 Q Now, did you ever discuss the alleged threat at a board  
10 meeting?

11 A No.

12 Q Do you know whether plaintiff eventually filed a police  
13 report?

14 A I was told that she eventually filed a police report.

15 Q Have you ever seen this police report?

16 A No, I have not.

17 Q Was this police report ever discussed at a board meeting?

18 A No.

19 Q Now, directing your attention to August 17th of 2015. Did  
20 the board end up voting to rescind the ineffective contract  
21 extension it had previously offered plaintiff?

22 A Yes.

23 Q Did you personally vote to rescind the contract extension?

24 A Yes.

25 Q And why?

G. Johnson - cross by Schwendener

1 A I wanted the -- whatever we do as a district to be in  
2 compliance with the state guidelines. And we had been informed  
3 by our attorney that we were not -- that it was ineffective,  
4 invalid. We were not in compliance because we had not  
5 completed the total process.

6 Q Do you recall when your attorney -- and your attorney,  
7 would that have been Mr. Izzo?

8 A Yes.

9 Q Do you recall when Mr. Izzo informed you of, of that?

10 A I believe it was at the July 22nd meeting.

11 Q Were you aware of the requirement that plaintiff met her  
12 goals when you first extended the contract in February of 2015?

13 A I was unaware that we had not completed the process.

14 Q Drawing your attention to August 17th of 2015. Do you  
15 recall the board issuing performance directives to the  
16 plaintiff?

17 A Yes.

18 Q Did you vote to issue the performance directives?

19 A Yes.

20 Q Did your vote to issue the performance directives have  
21 anything to do with the police report plaintiff filed?

22 A No.

23 Q One last question. Did your vote to extend -- or to  
24 rescind the ineffective contract extension have anything to do  
25 with plaintiff's filing of a police report?

G. Johnson - cross by Schwendener

1 A No.

2 MS. SCHWENDENER: Thank you. I don't have any  
3 further questions.

4 THE COURT: Thank you very much. Counsel.

5 MR. DAVIS: No further questions.

6 THE COURT: Nothing further. All right. Ladies and  
7 gentlemen -- and, Miss Johnson, stay right there. It is -- I  
8 want to try to let you out a little earlier on Friday. We're  
9 going to take our lunch early. All right. And so you're going  
10 to be going to lunch from 11:45 to 12:45. All right. Be back  
11 at 12:45. We've got a full hour today to make up for the hours  
12 I cheated you on. And we'll continue with the witnesses and  
13 the questioning. All rise.

14 (Jury excused.)

15 THE COURT: All right. Ma'am, you may step down.  
16 You're all done. You can just continue to observe, or you're  
17 allowed to leave. Whichever one you want.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 THE COURT: All right. Counsel -- go ahead, ma'am.  
21 You're fine. Counsel, is there anything to discuss right now?

22 MR. DAVIS: No, Your Honor.

23 THE COURT: Defense, anything?

24 MS. SCHWENDENER: No, Your Honor. Then I'll see you  
25 back here at a little before 12:45. All right. Thank you.

1 MR. DAVIS: Thank you, Your Honor.

2 MS. SCHWENDENER: Thank you.

3 (Whereupon, said trial was recessed at 11:45 a.m., until  
4 12:40 )  
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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DR. DENEAN ADAMS,

Plaintiff,

v.

BOARD OF EDUCATION HARVEY SCHOOL  
DISTRICT 152, GLORIA JOHNSON in her  
individual capacity, BETTY JOHNSON  
in her individual capacity,  
DR. KISHA McCASKILL in her  
individual capacity, JANET ROGERS  
in her individual capacity, TYRONE  
ROGERS in his individual capacity,  
LINDA HAWKINS in her individual  
capacity, FELICIA JOHNSON in her  
individual capacity,

Defendants.

No. 15 C 8144

November 2, 2018  
Chicago, Illinois  
12:50 p.m.

Trial

VOLUME 5  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SHARON JOHNSON COLEMAN, and a  
jury

APPEARANCES:

For the Plaintiff: MR. JEROME M. DAVIS, ESQ.  
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1 (The following proceedings were had in open court outside  
2 the presence of the jury:)

3 THE COURT: Anything on the record?

4 MR. DAVIS: I spoke with defense counsel. And there  
5 are a number of the defendants that aren't here, and I want to  
6 get into the record their interrogatory responses where they  
7 state when they became aware of the police report. And counsel  
8 has agreed that we can do a stipulation.

9 THE COURT: That's the way to do it.

10 MR. DAVIS: And handle that.

11 THE COURT: That's the way to do it.

12 MR. DAVIS: Thank you.

13 THE COURT: All right. But you'll do that after your  
14 witness.

15 MR. DAVIS: Yes.

16 THE COURT: Okay. Good. All right. Anything else  
17 other than that?

18 MR. DAVIS: That's it, Your Honor.

19 THE COURT: Anything else?

20 MS. SCHWENDENER: No, Judge.

21 THE COURT: All right. Two minutes.

22 (Short break taken.)

23 (Before the jury:)

24 THE COURT: All right. Thank you, ladies and  
25 gentlemen. Have a seat. Next witness.

B. Johnson - direct by Davis

1 MR. DAVIS: Yes, Your Honor. The plaintiff would  
2 like to call Miss Betty Johnson.

3 THE COURT: Miss Johnson, step forward.

4 BETTY JOHNSON, PLAINTIFF'S WITNESS, DULY SWORN

5 THE COURT: You've heard my speech. But now that  
6 you're in the chair, just remember you can serve yourself water  
7 at any time. Wait until each question is asked before you  
8 answer. Proceed.

9 MR. DAVIS: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. DAVIS:

12 Q Good afternoon, Miss Johnson. How are you?

13 A Good evening. Good afternoon.

14 Q You're currently a member of the Harvey 152 Board of  
15 Education?

16 A No, not currently.

17 Q Oh, okay. When did you come off the board?

18 A The last election.

19 Q Oh, okay. Were you a member in 2015?

20 A Yes.

21 Q Specifically in August, February 2015 through the whole  
22 year?

23 A Yes.

24 Q Okay. So when did you first hear about the police report  
25 that Dr. Denean Adams filed where she stated that Mr. Rogers

B. Johnson - direct by Davis

1 had physically threatened her?

2 A It was sometime over the weekend of July 10th.

3 Q Okay. So it was somewhere between July 9th and the 12th  
4 maybe?

5 A Somewhere around that time, yes.

6 Q Okay. All right. And did you talk to any of your other  
7 board members about it?

8 A No.

9 Q Okay. So how did you find out about it?

10 A Grapevine.

11 Q Grapevine.

12 A Telephone. Someone had report it.

13 Q You don't know who?

14 A No. No. I don't remember.

15 Q It could have been one of the other board members?

16 A It could have been, but I'm not sure.

17 Q We had a colloquy yesterday with Attorney Izzo, and we  
18 talked about the July 22nd board meeting. You remember that?

19 A Yes.

20 Q July 22nd.

21 A Yes.

22 Q 2015, where the discussion was about rescinding Dr. Adams'  
23 contract extension?

24 A Yes.

25 Q Okay. And you expressed the view in that meeting that

B. Johnson - direct by Davis

1 once you all told Dr. Adams that the goals she had been working  
2 under didn't count anymore, she was going to have a problem,  
3 right?

4 A I expressed a view? I don't recall.

5 Q Okay. Well, didn't you say she's going to lean on those  
6 goals, cycle goals?

7 A Sir, I really can't recall.

8 Q Okay.

9 A What happened is -- word for word.

10 Q I'm going to let you see the transcript.

11 A Sure.

12 MR. DAVIS: Well, rather than the transcript, I'm  
13 going to play the audio, Your Honor.

14 THE COURT: All right.

15 MR. DAVIS: And this is Plaintiff's Exhibit No. 72.

16 And this is the --

17 THE COURT: Just give the --

18 MR. DAVIS: -- July 22nd, 2015 board meeting.

19 THE COURT: All right.

20 (Whereupon, said tape was played in open court.)

21 BY MR. DAVIS:

22 Q So is that you --

23 A It sound like me.

24 Q -- Miss Johnson?

25 A Yes.

B. Johnson - direct by Davis

1 Q And who -- was that Dr. McCaskill saying so the goals we  
2 set at the retreat a year ago don't count? Was that Dr. Kisha  
3 McCaskill?

4 A That was her talking.

5 Q And ultimately at the end of that meeting -- well, let me  
6 ask you this before I ask that question: You all summoned Dr.  
7 Adams into the room after you decided what to call it, whether  
8 it was illegal, ineffective, you summoned her in the room to  
9 tell her that the extension that had been granted was  
10 ineffective; right?

11 A At what time are you speaking?

12 Q At the July -- I'm sorry, at the August 17th, 2015  
13 meeting.

14 A I believe you're correct.

15 Q Okay. And she was shocked when you all told her that.  
16 She said what about the goals I've been working under for over  
17 a year, right?

18 MS. SCHWENDENER: Objection.

19 THE COURT: Basis?

20 MS. SCHWENDENER: Calls for speculation as to what  
21 plaintiff felt.

22 THE COURT: As to she was shocked. Well, let's,  
23 let's ask another question to, to show that this is not just  
24 conclusory, Counsel.

25 MR. DAVIS: Okay.

B. Johnson - direct by Davis

1 THE COURT: Objection sustained.

2 BY MR. DAVIS:

3 Q Didn't she say I've already been working under goals for  
4 over a year. Those goals are valid?

5 A I really can't recall, sir.

6 Q Okay. Well, I'd like to show the witness Plaintiff's  
7 Exhibit 23.

8 A Okay.

9 Q You were the secretary of the board at that time, right?

10 A Correct.

11 Q And part of your job as being the secretary was to keep  
12 minutes of what happened in closed sessions, right?

13 A Correct.

14 Q And you were the secretary on the night of August 17th,  
15 2015?

16 A Yes.

17 MR. DAVIS: I'd like to publish, Your Honor.

18 THE COURT: Is this a document that's already been  
19 before the Court? I don't think so.

20 MR. DAVIS: No, it hasn't.

21 THE COURT: First of all, as to the document itself,  
22 what number is it, Counsel?

23 MR. DAVIS: It's Plaintiff's Exhibit No. 23.

24 THE COURT: Any objection to the document itself?

25 MS. SCHWENDENER: No, Your Honor.

B. Johnson - direct by Davis

1 THE COURT: All right. Any objection to publication?

2 MS. SCHWENDENER: No, Your Honor.

3 THE COURT: All right. Proceed, Counsel.

4 BY MR. DAVIS:

5 Q So you see the document says closed meeting minutes  
6 August 17th --

7 A Yes.

8 Q -- 2015? Secretary Betty Johnson?

9 A Correct.

10 Q And I'm scrolling to -- this is a redacted document, which  
11 means its stuff that's blocked out. Your lawyers did that.

12 MS. SCHWENDENER: Objection.

13 THE COURT: All right. Objection sustained. It's  
14 either agreed or there's nothing wrong with what they did.  
15 It's just not a full document.

16 MR. DAVIS: Yes, I was --

17 THE COURT: Proceed.

18 MR. DAVIS: Give the jury the benefit of  
19 understanding, Your Honor.

20 THE COURT: Well, it doesn't matter who blocked it  
21 out.

22 MR. DAVIS: Okay.

23 THE COURT: It's just something they shouldn't  
24 consider. Proceed.

25 BY MR. DAVIS:

B. Johnson - direct by Davis

1 Q Read where it says from Dr. Adams reentered.

2 A Dr. Adams reentered the closed session at 8:00 o'clock  
3 p.m. and was given the summation of the Board of Education by  
4 the attorney. Dr. Adams did claim that the goals and  
5 evaluations done at the retreat were valid, and at what point  
6 was she notified that she was not making goals.

7 Q That's your statement about what happened?

8 A No, it's not my statement. It's the board minutes.

9 Q Okay. I stand corrected. Thank you.

10 So Dr. Adams was never told before that moment that  
11 the goals she had been working under weren't effective?

12 A I have no knowledge of that.

13 Q Well, isn't that what you just said, what you just said is  
14 documented in the minutes?

15 A The minutes states that she had no opportunity to present  
16 the goals I do believe.

17 Q Okay. Thank you, ma'am. So after this, you voted along  
18 with the rest of the board members to rescind the contract  
19 extension, right?

20 A Yes.

21 Q I show you Plaintiff's Exhibit No. 21, which I'd like to  
22 publish to the jury.

23 THE COURT: And that's been published before.

24 MR. DAVIS: I don't think so, Judge.

25 THE COURT: Any objection, defense?



B. Johnson - direct by Davis

1 MS. SCHWENDENER: Just -- yes, Your Honor. Just an  
2 objection for the basis for showing it to the jury.

3 THE COURT: All right. This is an official document.  
4 Or do you have any --

5 MR. DAVIS: Yes, Judge. This is the official  
6 minutes.

7 THE COURT: Wait. I'm sorry, Counsel. One second.  
8 Do you have any doubt as to the foundation for the document?

9 MS. SCHWENDENER: No, Your Honor.

10 THE COURT: All right. Objection's overruled.  
11 Proceed, Counsel.

12 BY MR. DAVIS:

13 Q So these are every month you all when you'd meet and you  
14 take votes, you document it and you publish this to the public,  
15 right, these minutes?

16 A Yes.

17 Q The minutes we saw earlier were the closed session that  
18 you did?

19 A Right.

20 Q As the secretary.

21 A Correct.

22 Q So this is -- we started the first page of this, and these  
23 are the minutes from what transpired on August 17th, 2015,  
24 correct?

25 A That's what it says, yes.

B. Johnson - direct by Davis

1 Q So if we scroll down, you all had a lot of business that  
2 night. So it says, rescind the ineffective contract extension  
3 with the superintendent approved. You see that?

4 A Yes.

5 Q And please read what it says, a motion was made?

6 A A motion was made by Mrs. B. Johnson and seconded by Mr.  
7 Rogers to rescind the ineffective contract extension with the  
8 superintendent from earlier this year.

9 Q And the people who said aye, that's the people who voted  
10 for this?

11 A Yes.

12 Q And they are?

13 A Mrs. Hawkins, Miss Felicia Johnson, Betty Johnson, Mr.  
14 Rogers, Dr. McCaskill, and Mrs. Gloria Johnson.

15 Q And are any of them here today?

16 A Mrs. Gloria Johnson is, yes.

17 Q The others aren't?

18 A No.

19 Q So we heard -- you were here earlier when Mrs. Johnson was  
20 talking. When she was testifying, correct?

21 A Yes.

22 Q And she said something to the effect of Counsel Izzo told  
23 you all that the contract extension was ineffective because  
24 there were no goals, right?

25 A Correct.

B. Johnson - direct by Davis

1 Q But in point of fact what really happened on July 22nd,  
2 that's when you all met with Mr. Izzo, right?

3 A Yes.

4 Q Janet Rogers stated that the goals that we all have been  
5 talking about now for a long time were generic. Wasn't she the  
6 one who brought that up?

7 A I don't --

8 Q Didn't she say, Betty, remember those goals are generic?

9 A I don't remember if she brought it up or who did.

10 Q Well, let me play --

11 A But it was brought up.

12 Q -- the audio tape.

13 A Okay.

14 Q Plaintiff's Exhibit 72 of the July 22nd, 2015 meeting  
15 where this was discussed.

16 (Whereupon, said tape was played in open court.)

17 BY MR. DAVIS:

18 Q So was that Janet Rogers talking?

19 A Yes, it was.

20 Q And she was talking to you?

21 A She asked me do I remember.

22 Q Right. And so what she was saying was, we put her in  
23 place with generic goals. And who was she saying her? The her  
24 she was referring to is Dr. Denean Adams, right?

25 A I would --

B. Johnson - cross by Schwendener

1 MS. SCHWENDENER: Objection.

2 THE COURT: Basis?

3 MS. SCHWENDENER: Speculation.

4 THE COURT: Objection's overruled. The jury can  
5 weigh the credibility. Proceed. You may answer.

6 BY MR. DAVIS:

7 Q Who was Janet Rogers talking about?

8 A I believe Dr. Adams, yes.

9 MR. DAVIS: Thank you. I have no further questions,  
10 Miss Johnson.

11 THE WITNESS: Okay.

12 THE COURT: All right. Any questions?

13 MS. SCHWENDENER: Yes, Your Honor. Thank you.

14 THE COURT: Proceed.

15 CROSS-EXAMINATION

16 BY MS. SCHWENDENER:

17 Q Good afternoon, Miss Johnson.

18 A Good afternoon.

19 Q Where do you live?

20 A Harvey, Illinois.

21 Q And were you a member of the Harvey Elementary District  
22 152 Board of Education?

23 A Yes.

24 Q And during what time period were you a member of the Board  
25 of Education?

B. Johnson - cross by Schwendener

1 A 2009 to 2017 I believe, yes.

2 Q And is that an elected position?

3 A Yes, it is.

4 Q How many times were you elected or reelected?

5 A I was elected for two terms. Eight years total.

6 Q Were you compensated for your services as a board member?

7 A No.

8 Q And you are a named defendant in this case, correct?

9 A Yes.

10 Q Directing your attention to July of 2013. Do you recall  
11 the board hiring plaintiff as a superintendent?

12 A July of?

13 Q 2013.

14 A Okay. I thought I heard '15. Yes.

15 Q And did you vote to hire the plaintiff as the  
16 superintendent?

17 A No.

18 Q And do you recall the length of plaintiff's contract?

19 A It was for three years.

20 Q And did plaintiff's contract contain student performance  
21 and academic improvement goals?

22 A Yes.

23 Q Directing your attention to February 23rd of 2015. Do you  
24 recall being at a board meeting that night?

25 A Yes.

B. Johnson - cross by Schwendener

1 Q And did the board vote to extend plaintiff's contract that  
2 night?

3 A The board did vote, yes.

4 Q And do you know Tyrone Rogers?

5 A Yes.

6 Q How do you know him?

7 A He's a -- he was a board member at the time I served.

8 Q Now, did you become -- directing your attention to July of  
9 2015. Did you become aware of a claim by the plaintiff that  
10 Mr. Rogers had threatened her?

11 A Yes. By the 15th, yes.

12 Q Do you recall when you first heard about this alleged  
13 threat?

14 A No, I don't recall.

15 Q And I believe you said earlier you don't specifically know  
16 who may have told you, correct?

17 A No, I don't remember.

18 Q Do you recall what the alleged threat was?

19 A No.

20 Q Did you ever learn that plaintiff filed a police report in  
21 connection with the alleged threat?

22 A I was told that the police was called.

23 Q Have you ever seen a police report?

24 A No.

25 Q Do you have any idea what may have been contained in the

B. Johnson - cross by Schwendener

1 police report?

2 A No.

3 Q Did you ever discuss the police report with Mr. Rogers?

4 A No.

5 Q Was the police report ever discussed at a board meeting?

6 A No.

7 Q It's been established that the board voted to rescind the  
8 contract that it previously offered plaintiff, correct?

9 A Yes.

10 Q At any point did you learn that the extension was  
11 ineffective?

12 A Yes. At sometime during the spring. March, April, May.  
13 I have -- don't recall.

14 Q And how did you learn that?

15 A I was told by the attorney -- well, we as a board was told  
16 by the attorney that it was no longer effective. And I don't  
17 know if it came from the attorney or the board president to be  
18 honest.

19 Q And do you recall the board attorney being Mr. Izzo,  
20 correct?

21 A Yes.

22 Q And do you recall what Mr. Izzo told you?

23 A He told the board that we did not -- we were not to extend  
24 her contract for an additional year without evaluating some  
25 goals and what have you.

B. Johnson - redirect by Davis

1 Q And you did vote to rescind the contract extension?

2 A Yes.

3 Q Did your vote have anything to do with the police report  
4 plaintiff filed?

5 A No. No.

6 Q Directing your attention to August 17th of 2015. Did the  
7 board issue performance directives to the plaintiff?

8 A Yes.

9 Q Did you vote in favor of issuing performance directives?

10 A Yes.

11 Q Did your vote have anything to do with the police report  
12 plaintiff filed?

13 A No.

14 MS. SCHWENDENER: Thank you. I don't have any  
15 further questions.

16 THE COURT: All right. Thank you very much.  
17 Anything further?

18 MR. DAVIS: A few, Your Honor.

19 THE COURT: Go ahead.

20 REDIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q I just want to clarify, Miss Johnson. You just said that  
23 Attorney Izzo told you all this contract extension was  
24 ineffective somewhere in the spring of 2015. In fact, you were  
25 here yesterday when he testified, right?



B. Johnson - redirect by Davis

1 A Yes, I was.

2 Q Do you recall him saying that he didn't learn about any of  
3 this until July 22nd at the meeting?

4 A I do recall. And again, I have to say that it was so much  
5 going on, you know, I can't be sure about when I heard it.

6 Q But you're not contradicting his testimony here?

7 A I will not contradict anyone's testimony.

8 Q And one other question. You said on tape that Tyrone  
9 Rogers loved Dr. Adams for the first two years. She had you  
10 fooled. Didn't you say that?

11 A No, I didn't.

12 Q Okay. You never --

13 A I know I never said that.

14 Q You never made that statement --

15 A No --

16 THE COURT: Excuse me, ma'am. You've got to wait  
17 till he asks the question.

18 THE WITNESS: I'm sorry.

19 THE COURT: Go ahead.

20 BY MR. DAVIS:

21 Q Well, let me ask you this: Were you aware that after  
22 July 10th Tyrone Rogers wanted Dr. Adams fired immediately?

23 A I don't know if, if that was exactly it. It was -- the  
24 only thing I heard around July was the fact that the police had  
25 been called to central office. That some kind of threat was

B. Johnson - redirect by Davis

1 made against Dr. Adams and stuff was going back and forth.

2 Q But you were in board meetings. You were certainly there  
3 in August, right?

4 A Yes, I was.

5 Q We've established that. And in August you all talked  
6 about what to do because you had been talking about these  
7 performance directives, right?

8 A What do you mean what to do?

9 Q You were talking about Tyrone Rogers wanted to terminate  
10 her. He didn't want to do the performance directives, right?

11 A I can't say that I -- that's true.

12 Q Are you saying you don't recall, or are you saying that it  
13 didn't happen?

14 A I don't recall Tyrone Rogers wanting to terminate her at  
15 the August meeting.

16 Q Okay. Do you recall Tyrone Rogers at any meeting after  
17 July 10th where he said I'm sick of this. Y'all ain't doing  
18 nothing. We need to get rid of her. You remember that?

19 A At some point, yes. Exactly when, I don't recall.

20 Q But it would have been after July 10th?

21 A With Tyrone it could have been before.

22 Q Okay. You don't have any recollection of it before  
23 July 10th, do you?

24 A No.

25 Q So we're talking about after August, through the fall it

B. Johnson - redirect by Davis

1 was a constant thing. You heard Mr. Rogers here testifying  
2 earlier where he was saying that he wanted Dr. Adams out, and  
3 some of the board members were saying, no, we got to go through  
4 a process. You remember that testimony?

5 A Yes, I do.

6 MS. SCHWENDENER: Objection.

7 THE COURT: I'm sorry. Basis?

8 MS. SCHWENDENER: Form.

9 THE COURT: I'll allow some leeway. Objection's  
10 overruled.

11 BY MR. DAVIS:

12 Q Do you remember the testimony?

13 A Yes, I remember his testimony.

14 MR. DAVIS: Okay. I think that's it, Mrs. Johnson.  
15 Thank you.

16 THE WITNESS: Thank you.

17 THE COURT: Anything else?

18 MS. SCHWENDENER: No further questions. Thank you.

19 THE COURT: All right. Miss Johnson, you can step  
20 down. Take your time.

21 (Witness excused.)

22 THE COURT: Counsel, you want to step to the side  
23 real quick please.

24 MR. DAVIS: Yes, Your Honor.

25 THE COURT: As they're stepping to the side, ladies

1 and gentlemen, again just so we're clear, Miss Betty Johnson is  
2 also a defendant and she was being questioned both on the  
3 adversarial side for the plaintiff and in the defendants' case  
4 in chief. All right.

5 (Side bar proceedings out of the hearing of the jury:)

6 THE COURT: So any other witnesses that I don't know  
7 about?

8 MR. DAVIS: No, Judge.

9 THE COURT: You're getting ready to rest?

10 MR. DAVIS: Yes, Judge.

11 THE COURT: Okay. Any other witnesses that you have?

12 MS. SCHWENDENER: No, Judge.

13 THE COURT: Okay. So this is the way I'm going to do  
14 it to keep them from coming back and forth, we are going to get  
15 your stipulations, ask if you have any more witnesses. Do you  
16 need to get your stipulations together, or are you ready to do  
17 it now?

18 MR. DAVIS: Well, the only stipulation we're going to  
19 do is regarding the --

20 THE COURT: Do you have it?

21 MR. DAVIS: No.

22 THE COURT: Do they all --

23 MR. PETRARCA: We haven't written it out.

24 THE COURT: You haven't written it out. Okay. We've  
25 got to take a break. All right.

1 MR. PETRARCA: Sorry, Judge.

2 (Before the jury:)

3 THE COURT: All right. Ladies and gentlemen, when  
4 we're doing this, you're supposed to be quiet. But you can  
5 talk in a second. All right. There are some things -- I  
6 always tell jurors you know you're getting to the -- closer to  
7 the end of the case when we start taking even more breaks. So  
8 we need to take about a -- and this one will be short. We'll  
9 probably be back up at 1:30. And we just need a short break.  
10 They need to take care of something out of your presence. All  
11 right. Everybody rise. Head on out and my staff will join  
12 you.

13 (Jury excused.)

14 THE COURT: I'm going to sit right here while you all  
15 get that stipulation together.

16 (Short break taken.)

17 THE COURT: Anything on the record?

18 MR. DAVIS: No, Judge.

19 THE COURT: Defense?

20 MS. SCHWENDENER: No, Your Honor.

21 (Before the jury:)

22 THE COURT: All right. Are there any other  
23 witnesses, Mr. Davis, for the plaintiff?

24 MR. DAVIS: No, Your Honor.

25 THE COURT: All right. And you have some evidence by

1 way of stipulation, is that correct?

2 MR. DAVIS: Yes, Your Honor.

3 THE COURT: All right. Ladies and gentlemen, at the  
4 beginning of the trial I told you for the most part, and I'll  
5 be telling you again with instructions, what the lawyers say is  
6 not evidence unless I give you instruction that it is. The  
7 lawyers aren't going to be saying it. I'm going to be reading  
8 it. It's a stipulation that they both have agreed to. When I  
9 read this statement to you, you will be considering this  
10 information as evidence just as you will any of the other  
11 evidence that you heard here today. All right.

12 Defendant Dr. Kisha McCaskill states that plaintiff  
13 told her on July 9th, 2015 about the alleged statement that  
14 Tyrone Rogers made to plaintiff. Defendant Dr. Kisha McCaskill  
15 states that plaintiff advised her that she filed a police  
16 report.

17 Defendant Felicia Johnson states that she does not  
18 have knowledge that plaintiff filed a police report per se with  
19 the Harvey Police Department. Defendant Felicia Johnson  
20 says -- states that on July 9th, 2015 she became aware that  
21 plaintiff contacted the Harvey Police Department regarding some  
22 statement that Tyrone Rogers allegedly made to plaintiff.  
23 Defendant Felicia Johnson became aware of the alleged statement  
24 because she was at school and saw the Harvey Police Department  
25 arrive at the school.

1 Defendant Linda Hawkins states that she does not have  
2 knowledge that plaintiff filed a police report per se with the  
3 Harvey Police Department. To the best of defendant Linda  
4 Hawkins' independent recollection, defendant Linda Hawkins  
5 believes that on or around September 2015 she became aware that  
6 plaintiff contacted the Harvey Police Department regarding some  
7 statement that Tyrone Rogers allegedly made to plaintiff.  
8 Defendant Linda Hawkins believes she became -- she first became  
9 aware of the alleged statement by virtue of reading and/or  
10 learning about plaintiff's lawsuit against defendants.

11 So stipulated, Mr. Davis, on behalf of your client?

12 MR. DAVIS: Yes, Judge.

13 THE COURT: So stipulated, counsel for the  
14 defendants.

15 MS. SCHWENDENER: Yes, Your Honor.

16 THE COURT: So, ladies and gentlemen, again that word  
17 stipulation is an agreement that you would hear this evidence  
18 if these people were called to testify. All right.

19 All right. With that we will have no further  
20 witnesses or evidence today. We expect Tuesday -- we're going  
21 to let you go early, because again, before this matter is  
22 presented to you for deliberations, you have to hear the  
23 closing arguments and then get instructions on the law.  
24 Instead of having you wait for an hour and a half or more  
25 before we get to you at 3:30 or 4 today, the Court thought it

1 would be better for us to go ahead and recess. Let you be on  
2 your way, enjoy your weekend, and come back on Tuesday  
3 refreshed, ready to hear the end of the case and go into  
4 deliberations.

5 So you'll be planning to deliberate on Tuesday. That  
6 means you do not take a step toward that. You have not gotten  
7 to the point where you can begin considering the case, because  
8 on Tuesday you never know. There may be a little bit of  
9 evidence. But right now we don't plan on it. And you have not  
10 received the instructions yet. So have a Harvey Board of  
11 Education free weekend. All right. All right. No googling.  
12 No going into the case. No considering the case. No  
13 discussing the case. Have a good weekend, ladies and  
14 gentlemen. All rise.

15 You'll be here at 10 o'clock, unless everybody tells  
16 me they voted already. Has everybody voted already? If you  
17 haven't, I'm giving you time. 10:00 o'clock be here. All  
18 right. Thank you. Have a good weekend.

19 (Jury excused.)

20 THE COURT: All right. We'll give them a chance to  
21 leave. You can talk to the various people and see if they want  
22 to hang around with us for a couple of hours on a Friday  
23 afternoon.

24 MR. DAVIS: I'm going to let Dr. Adams and her family  
25 leave also, Judge.



1 THE COURT: All right. I'm saying everybody gets to  
2 make that choice except the lawyers.

3 MR. DAVIS: Okay. Thank you.

4 THE COURT: Thank you.

5 (Short break taken.)

6 THE COURT: You're ready with the exhibits, Mr.  
7 Davis?

8 MR. DAVIS: Yes, Judge.

9 THE COURT: All right. So, Mr. Davis, before you  
10 rest your case and for the plaintiff, are there any exhibits  
11 that you wish to move into evidence?

12 MR. DAVIS: Yes, Judge. I have a list.

13 THE COURT: All right. Go on with your list. Why  
14 don't you do the non-objected list, and then we'll go through  
15 the objections.

16 MR. DAVIS: Okay. Exhibit 1, Exhibit 2, Exhibit 5,  
17 Exhibit 6, Exhibit 9. I'm not sure we introduced Exhibit 8  
18 into evidence before the jury. I'll come back, but I'm not  
19 sure about --

20 THE COURT: What was the exhibit that you are not  
21 sure of?

22 MR. DAVIS: Eight.

23 THE COURT: And what is that? That's what I mean.

24 MR. DAVIS: The closed meeting minutes from the June  
25 retreat.

1 THE COURT: Verbal or -- I mean, oral or written?

2 MR. DAVIS: Written.

3 THE COURT: All right. And you're not sure about  
4 what?

5 MR. DAVIS: I'm not sure whether I presented it to  
6 the jury, Judge.

7 THE COURT: Well, right now there's no objection to  
8 it, correct? Again, it doesn't mean it's not -- it doesn't  
9 mean it's going back. This is just entered into evidence.

10 MR. DAVIS: Right.

11 THE COURT: All right. So tentative. That will be a  
12 tentative. You've got to show me later that you did do that  
13 one.

14 MS. SCHWENDENER: Right. Assuming counsel entered --  
15 or used it, I have no objection.

16 MR. DAVIS: Yes. I may not have used it.

17 THE COURT: All right. All right.

18 MR. DAVIS: Exhibit 9.

19 THE COURT: Which is minutes also?

20 MR. DAVIS: No. Draft of the new contract.

21 THE COURT: The one where she made corrections on it?

22 MR. DAVIS: Yes.

23 THE COURT: All right.

24 MR. DAVIS: The draft proposal for a new contract.

25 THE COURT: All right. Go ahead.

1 MR. DAVIS: Exhibit 10, the RFP for forensic audit.  
2 Exhibit 11, the telephone records for Dr. Adams. Exhibit 12,  
3 the telephone records for Tyrone Rogers. I believe they have  
4 an objection to Exhibit 13.

5 THE COURT: All right. We'll come back to that. Go  
6 ahead.

7 MR. DAVIS: Exhibit 14 --

8 MS. SCHWENDENER: We have no objection to 14, Judge.

9 THE COURT: 13 and 14?

10 MS. SCHWENDENER: Yes, Your Honor.

11 THE COURT: All right.

12 MR. DAVIS: Exhibit 15, Exhibit 16, Exhibit 19,  
13 Exhibit 21, 22, 23, 27, 28, 29, 40. And they may have an  
14 objection to FMLA.

15 MS. SCHWENDENER: Judge, we objected to 40. That's  
16 the nonrenewal of plaintiff's contract.

17 THE COURT: All right.

18 MR. DAVIS: No, 40 is the FMLA -- I'm sorry. 49. My  
19 eyes are playing tricks on me.

20 MS. SCHWENDENER: 49 --

21 MR. DAVIS: 49.

22 THE COURT: 49.

23 MS. SCHWENDENER: 49 we objected to. That's the FMLA  
24 certification.

25 THE COURT: So you have an objection to that one?

1 MS. SCHWENDENER: Yes. Yes.

2 MR. PETRARCA: Yes.

3 THE COURT: Okay.

4 MR. DAVIS: And you allowed them to be presented to  
5 the jury.

6 THE COURT: Right now they get to make their objec --

7 MR. DAVIS: Okay.

8 THE COURT: I'm just saying go through the  
9 non-objected ones first.

10 MR. DAVIS: Okay. I just wanted to point out I  
11 thought it was objected to. Okay. They have an objection I  
12 believe to 52 and 53. 55, 56, 57.

13 THE COURT: Okay. So wait a minute. 52 and 53  
14 there's an objection to.

15 MR. DAVIS: Yes.

16 MS. SCHWENDENER: Yes, Your Honor.

17 THE COURT: 55 is your next one on the list of  
18 non-objected?

19 MR. DAVIS: Yes.

20 THE COURT: Thank you.

21 MR. DAVIS: 56, 57. 58 is Tyrone Rogers' deposition  
22 transcript, and we've used portions of it.

23 THE COURT: For impeachment?

24 MR. DAVIS: Yes.

25 THE COURT: All right. Go ahead.

1 MR. DAVIS: 63.

2 MS. SCHWENDENER: Judge, just for the record, for  
3 Tyrone Rogers' deposition transcript we object to the entire  
4 transcript being introduced.

5 THE COURT: The Court understands.

6 MS. SCHWENDENER: Sure.

7 THE COURT: Just the parts that came before the jury.

8 MS. SCHWENDENER: Correct.

9 THE COURT: For impeachment. All right.

10 MR. DAVIS: 63 we did the stipulation for, Judge.

11 THE COURT: All right. That's the -- what I read?

12 MR. PETRARCA: Yes.

13 MS. SCHWENDENER: Yes, Your Honor.

14 THE COURT: 63 is what I read.

15 MS. SCHWENDENER: Yes.

16 THE COURT: And don't forget, Counsel, only if you  
17 need it back, but most times stipulations and most --  
18 especially if they're written and no one else testified to it,  
19 it needs -- this would, if anything, need to go back to the  
20 jury. But it needs to go back in a form that is just with  
21 those three paragraphs. All right. So I will give you back  
22 that, and you all can figure out how you want to put that in.  
23 But make sure you show it for Tuesday, but it just needs to be  
24 three paragraphs.

25 You could write that the parties stipulate by and

1 through the parties by their attorneys that if called to  
2 testify, these witnesses would testify to -- these three  
3 witnesses would testify to the information contained therein.  
4 Something like that.

5 MS. SCHWENDENER: Sure.

6 THE COURT: Okay. All right. What else?

7 MR. DAVIS: I believe that's everything that they  
8 don't object to. The rest -- I'm not sure about -- yes, I  
9 think that's everything that they don't object to.

10 THE COURT: All right. And then let's go to the  
11 objected items, and make sure you spell out exactly what they  
12 are, not just their number. No. 13. All the non-objected  
13 items are moved into evidence. Go ahead. No. 13 is what?

14 MR. DAVIS: The police report I believe.

15 THE COURT: Is that correct?

16 MR. DAVIS: Yes.

17 THE COURT: No. I'm asking the defense.

18 MS. SCHWENDENER: Yes, that's correct, Your Honor.

19 THE COURT: All right. And the basis of your  
20 objection?

21 MS. SCHWENDENER: For the police report it's hearsay,  
22 and I believe it's also subject to the Court's prior ruling on  
23 motion in limine.

24 THE COURT: The police reports are generally not  
25 admitted because they are summaries and hearsay. In this case

1 I wouldn't -- if I let it into evidence, it wouldn't be for  
2 that reason. It would be for the reason of there's been  
3 testimony about whether even a police -- well, whether there  
4 was even such a statement. Whether such statement was even  
5 reported to the police. And it would really only be shown to  
6 show that there was a police officer who testified and said he  
7 received a report. Not the substance of what the report is and  
8 what actions as he took thereafter.

9 Now, because he was present and said that's what he  
10 did, I mean, the police report would never go back to the jury.  
11 And it would have -- if it got admitted into evidence, it would  
12 have to have a limiting instruction, which I think in this case  
13 since he was one of the first witnesses, they never saw the  
14 police report, did they?

15 MS. SCHWENDENER: No, Your Honor, they did not.

16 THE COURT: Yes. They never saw it. Then the Court  
17 would say keep it out because of hearsay. But his testimony is  
18 present. So a lot of times the police report, people try to  
19 get it in and nobody is present and questioned about it. And  
20 the only thing he's being questioned about is not the, the  
21 substance or whether it's right or wrong. It was more that  
22 there was some type of something, a report or -- to the police  
23 or the police clearly got there. So, you know, the evidence is  
24 in through him. The hearsay report is not the best evidence,  
25 and so the Court will not allow it into evidence. However, you

1 are allowed to speak about it in terms of one was written.

2 Does that make sense?

3 MR. DAVIS: Sure, Judge.

4 MS. SCHWENDENER: Yes.

5 MR. DAVIS: The only thing I'd say is that the report  
6 is a record regularly kept under 803-8, so I think it would --

7 THE COURT: Counsel, under what theory have you ever  
8 heard a police report in general being allowed in?

9 MR. DAVIS: Well, in criminal cases it's generally  
10 not allowed.

11 THE COURT: In civil cases either. It's the same --

12 MR. DAVIS: In civil cases the prohibition isn't the  
13 same as a blanket in a criminal case.

14 THE COURT: Why isn't it, why isn't it let in in a  
15 criminal case? Because it's a summary.

16 MR. DAVIS: Yes. And --

17 THE COURT: And why would it be not a summary in a  
18 civil case?

19 MR. DAVIS: In this case I'd first say it's a record  
20 and a regularly kept record, and it's not a summary in the  
21 sense of the normal sense here because what I say is that my  
22 client when she talked to him, was still under the emotional  
23 stress of the startling event. So as I said in my papers, we  
24 think her statement comes in as an excited utterance, which  
25 would be an exception to the hearsay rule.



1           We cited authority that said you can -- it doesn't  
2 have to be contemporaneous with the event. The fact that the  
3 report was made a couple of days later, she was still under the  
4 emotional stress of it. And in this case it has more indicia  
5 of reliability. Because remember, she didn't call the police.  
6 She didn't know the police was coming. So it wasn't like she  
7 had time to contemplate and prepare and to put this in the  
8 record with some anticipation that it might be used sometime  
9 down the road.

10           The police officer just showed up at her office and  
11 said what happened, and she told him. And again, this is a  
12 mere two days, basically a weekend after the event. So we  
13 believe on that basis it should be allowed in for the record.

14           THE COURT: All right. Thank you, Counsel. This  
15 Court is not going to allow it in in this particular case since  
16 the officer actually came in. He testified. The information  
17 is out in there in the way actually it should be out there --

18           MR. DAVIS: Sure.

19           THE COURT: -- instead of having a jury look at the  
20 summary of his statements, whatever summary she stated. And in  
21 the majority of cases that are reported to police, there's  
22 always going to be excited utterance. That would be almost not  
23 even an exception. Police -- most police reports are not done  
24 in a situation where somebody isn't excited when they're filing  
25 a police report based on the circumstances that police deal in.

1           So the Court believes all the information necessary  
2 has gotten before the jury. You clearly can make a reference  
3 that she did make a police report and informed the police that  
4 this has happened, this happened. I think that is appropriate.  
5 There can be references to the police report that there would  
6 not normally be allowed because of what's involved here. All  
7 right.

8           MR. DAVIS: Okay. Thank you.

9           THE COURT: That's my ruling. The actual police  
10 report itself will not be in evidence. All right.

11          MR. DAVIS: Okay.

12          THE COURT: All right. Proceed. What's the next  
13 one? Exhibit 14?

14          MS. SCHWENDENER: 14, Your Honor. That was the  
15 continuation and supplemental report. We are -- same  
16 objection.

17          THE COURT: All right.

18          MR. DAVIS: And we really didn't want 14 in.

19          THE COURT: All right. Well, you're withdrawing 14?

20          MR. DAVIS: Well, actually we -- 14 is where he  
21 actually made the statement that we just talked about, so we  
22 did want 14.

23          THE COURT: All right. So 13 and 14, the exhibits  
24 themselves will not be allowed. All right. Verbal references,  
25 oral argument on them will be based on his testimony in court.

1 MR. DAVIS: Yes.

2 THE COURT: Okay. Go ahead. No. 49 is next. What's  
3 the objection? What is the document?

4 MS. SCHWENDENER: The document was the FMLA  
5 notification. It contains medical opinions. Dr. -- or Miss  
6 Cunningham was not here to testify. So I would object for  
7 foundation, hearsay.

8 THE COURT: Counsel.

9 MR. DAVIS: Judge, it's a regularly kept record. It  
10 was a record that her employer required her to submit to go on  
11 a medical leave. It really doesn't say anything. It just says  
12 a signature on it. And the jury has already -- it's been  
13 presented to the jury. Your Honor allowed Dr. Adams to testify  
14 about it as well. So we don't see why it shouldn't come in.

15 THE COURT: And what's the prejudice?

16 MS. SCHWENDENER: Judge, unless I'm mistaken, I, I  
17 believed I objected as far as the introduction of the FMLA  
18 certification as far as what the diagnosis, and I thought Your  
19 Honor had sustained the objection. The basis is that it  
20 contains a medical diagnosis for plaintiff. And there's  
21 been -- Miss Cunningham did not testify. Therefore, there's  
22 been no foundation for any type of medical diagnosis for  
23 plaintiff. It was not a record that the district regularly  
24 keeps in, in the course of its -- it was a FMLA certification  
25 that plaintiff's doctor gave to plaintiff, and then she sent it

1 to the district.

2 THE COURT: Well, the district does keep it. I mean,  
3 the district is not denying they got an FMLA report. That's  
4 not the impression --

5 MS. SCHWENDENER: We're not denying it.

6 THE COURT: -- I'm getting.

7 MS. SCHWENDENER: But, but it's hearsay and it  
8 contains a medical opinion. And there's been no foundation for  
9 the medical opinion, and it's hearsay. The content of the  
10 report was prepared by Miss Cunningham, who is not here to  
11 testify to the content. It's hearsay. It was not a report  
12 that was prepared by plaintiff.

13 MR. DAVIS: It's being submitted for the purpose of  
14 showing that she went on a medical leave, Judge. And it  
15 doesn't really contain any diagnosis. It's a standard form --

16 THE COURT: What do you mean it doesn't? It does  
17 definitely say that she should be off for a certain -- as to --

18 MR. DAVIS: Yes.

19 THE COURT: -- a certain amount of time, which is  
20 what you're trying to prove.

21 MR. DAVIS: Right.

22 THE COURT: And that's what they dispute.

23 MR. DAVIS: Right. But I don't believe that's a  
24 diagnosis in my opinion. I think the diagnosis is something  
25 much more elaborate.

1 THE COURT: Well, you may, but you have got to have  
2 a -- if she needed -- in order to get this FMLA or to at least  
3 apply for it, she needed to have a doctor say I was off for  
4 this amount of time.

5 MR. DAVIS: Yes.

6 THE COURT: That is an opinion. So the form is not  
7 going to be allowed. You reference that she applied for FMLA,  
8 that testimony is allowed.

9 MR. DAVIS: So that she actually went on FMLA?

10 THE COURT: Well, I mean, her verbal testimony over  
11 your objection, it was in front of the jury. They've talked  
12 about her time off. You tried to talk about her time off as  
13 one of the reasons for her not doing a good job. And what's  
14 her name, Mrs. Rogers, she was never there when we called. So  
15 I'm not going to let you all just throw these statements out  
16 when she has some response to her performance issues, you know,  
17 so no. She can -- her testimony is in. The document is out.

18 And, of course, just because the document is out, you  
19 can't say she doesn't have any proof, you know. You can talk  
20 about doctor, but not about that she put in for FMLA.

21 MS. SCHWENDENER: No.

22 THE COURT: That cannot be argued not if she has the  
23 document that she put in for it and the only reason it's out is  
24 because he didn't bring the doctor in, I'm not going to keep  
25 her statement that I put in for medical leave. Now, she can't

1 testify because she had a mental condition.

2 MS. SCHWENDENER: Correct.

3 THE COURT: But she can say she put in for FMLA.

4 MS. SCHWENDENER: And, Judge, we're not -- that's  
5 fine. Yes, I understand.

6 THE COURT: Okay.

7 MS. SCHWENDENER: Our objection was just the content  
8 of the diagnosis and --

9 THE COURT: Yes, the diagnosis cannot come in. She's  
10 a layperson.

11 MS. SCHWENDENER: Right. Thank you.

12 THE COURT: All right. No. 52. What's that?

13 MR. DAVIS: That's the -- I'm sorry. Go ahead.

14 MS. SCHWENDENER: I'm sorry, Counsel. Go ahead.

15 MR. DAVIS: No, it's your objection. You go right  
16 ahead.

17 MS. SCHWENDENER: That was Eric Kellogg's 2013  
18 performance evaluation.

19 THE COURT: From the board? The one that --

20 MS. SCHWENDENER: Yes.

21 THE COURT: From the board. The one that Mr. Rogers  
22 testified about?

23 MR. DAVIS: Right.

24 THE COURT: That one and -- and it's kept by the  
25 board?

1 MS. SCHWENDENER: Yes.

2 THE COURT: All right. And that was No. 52 and 53,  
3 is that correct?

4 MR. DAVIS: 53 is the severance agreement, Judge.

5 THE COURT: Ah.

6 MR. DAVIS: And we didn't actually present the  
7 severance agreement.

8 THE COURT: Right. You did not. So that --

9 MR. DAVIS: So I don't think -- I'm not even  
10 interested in putting that in.

11 THE COURT: So that's not offered. So only 52 is  
12 offered?

13 MR. DAVIS: Yes.

14 THE COURT: All right. Over your objection I'm going  
15 to allow it. No. 55.

16 MR. DAVIS: This was the document where Your Honor  
17 ruled they waived the attorney/client privilege and they had to  
18 turn over as a non-privileged document. This is the transcript  
19 of the July 22nd meeting --

20 THE COURT: Ah, with the --

21 MR. DAVIS: -- with Mr. Izzo.

22 THE COURT: Is it?

23 MR. DAVIS: Yes.

24 THE COURT: That's 55?

25 MS. SCHWENDENER: 55 we don't have an objection to,

1 Judge.

2 THE COURT: Okay. Well, it would have been admitted  
3 anyway. But okay. No objection. And then what about 56?

4 MS. SCHWENDENER: No objection. And 57 no objection.

5 THE COURT: Oh, okay. What about -- the next one I  
6 have is 58.

7 MS. SCHWENDENER: 58 was Mr. Rogers' deposition  
8 transcript. I objected to the entire transcript coming in as  
9 evidence.

10 THE COURT: Yes. It's only the portions that were  
11 used for impeachment. And I don't know. You give me the  
12 names, and that part will be let in. Okay?

13 MS. SCHWENDENER: Sure.

14 THE COURT: The numbers, not the names. The numbers  
15 of the pages. And then there was 63. What's 63?

16 MR. DAVIS: That's the stipulation.

17 THE COURT: That's not objected to.

18 MS. SCHWENDENER: Correct.

19 THE COURT: It's the stipulation. You just have to  
20 fix.

21 MS. SCHWENDENER: Yes.

22 THE COURT: All right. Anything else? Plaintiff.

23 MS. SCHWENDENER: I think counsel wanted to  
24 introduce --

25 MR. DAVIS: Well, then there's the tapes, Judge. And



1 we've got -- we presented portions of 69, 70, 71, and 72.

2 THE COURT: All right. And those were objections --  
3 that was an objection that was part of the motion in limine.

4 MS. SCHWENDENER: Correct.

5 THE COURT: And so to be consistent with their  
6 objections, obviously they have to object. This Court has  
7 allowed the playing of the tapes. These are ones that you  
8 played?

9 MR. DAVIS: Yes.

10 THE COURT: The Court -- over their objection it's  
11 admitted into evidence. All right.

12 MR. DAVIS: Thank you, Judge.

13 THE COURT: You're welcome. Anything else?

14 MS. SCHWENDENER: Judge, just for clarification.  
15 Only those portions of the tapes, correct? Not the entire  
16 tape?

17 THE COURT: Again, this is not going to the jury.  
18 Two different things.

19 MS. SCHWENDENER: Correct.

20 THE COURT: All right. So, no, they're not playing  
21 any tapes in the back, so -- nobody's tapes. Even the ones let  
22 in. All right. So this is -- it's two different things. All  
23 right. So ... I mean, I don't know how he's going to be able  
24 to split the tapes to put them into evidence. That evidence is  
25 different from -- and they're evidence of the board minutes.

1 I'm assuming the minutes he got from you.

2 MR. DAVIS: Yes.

3 THE COURT: They didn't -- yes. So the tapes are  
4 into evidence. The tapes will not be, even portions will not  
5 be played for the jury. You can do it in closing argument if  
6 you want, but they won't go back and they won't have them to go  
7 over. Okay.

8 MR. DAVIS: Okay.

9 THE COURT: All right. Anything else?

10 MR. DAVIS: That's it for the --

11 THE COURT: The evidence?

12 MS. SCHWENDENER: Judge, we still have our evidence  
13 for --

14 THE COURT: Right. Right now we're on the  
15 plaintiff's case. Do you want to go ahead and pass by any  
16 motion at the close of the plaintiff's case?

17 MS. SCHWENDENER: No. No. No. No. No.

18 THE COURT: Well, then I would not -- I would not  
19 talk about your evidence then.

20 MS. SCHWENDENER: Sorry, Judge. I thought you  
21 were -- I thought you were talking to us.

22 THE COURT: No. We don't have a jury here. Our time  
23 is, is a little bit more open now. So, Counsel, do you have  
24 any more evidence to present as the plaintiff?

25 MR. DAVIS: No, Judge.

1 THE COURT: All right. Are you resting?

2 MR. DAVIS: Yes, Judge.

3 THE COURT: Okay. Plaintiff has rested her case.

4 And now are there any motions at the close of the plaintiff's  
5 case, defense?

6 MS. SCHWENDENER: Yes, Judge.

7 MR. PETRARCA: We do have a motion, Judge.

8 THE COURT: All right. Then argue. You can step up.  
9 At least for this you guys should at least step up. All right.  
10 And both don't have to stand. Plaintiff, you can come up once  
11 you make your argument. If you want to sit until he makes his  
12 argument, you can and vice versa.

13 MR. PETRARCA: Judge, we have three separate motions  
14 under Rule 50.

15 THE COURT: Have you put them in writing?

16 MR. PETRARCA: We did put them in writing.

17 THE COURT: Okay.

18 MR. PETRARCA: I'm going to tender copies to counsel.  
19 The first one is defendants' motion and brief in support of  
20 judgment as a matter of law on punitive damages. Also  
21 tendering defendants' motion and brief in support of judgment  
22 as a matter of law on Count 2, due process. Tendering to  
23 counsel. And finally, defendants' motion and brief in support  
24 of judgment as a matter of law on Count 1, retaliation.

25 Your Honor, would you like me to submit copies to the

1 Court, or I can file them electronically or --

2 THE COURT: Oh, no, they need to be submitted to the  
3 Court definitely. And if you're making those motions, at some  
4 later time you can put them on the docket. And it's a quarter  
5 to 3. Before you argue, I'm going to let counsel take a look  
6 at what you're filing. Is this your first time seeing it?

7 MR. DAVIS: This is my first time seeing it, Judge.

8 THE COURT: All right. Yes.

9 MR. DAVIS: And obviously I'd want to respond in  
10 writing. These are pretty voluminous.

11 THE COURT: Now, Counsel, our time is -- I don't know  
12 how you're going to figure that this is going to be responded  
13 to. I'm not here on Monday. And you respond, and then Tuesday  
14 we got to argue, and you still won't know exactly what you're  
15 arguing. I don't know -- I mean, they're not the first  
16 defendant to come up with written motions for a Rule 50  
17 decision. They're not the first one.

18 MR. DAVIS: I'm sure, and I'll respond to their  
19 argument, Judge. But I at least --

20 THE COURT: Why don't you take a --

21 MR. DAVIS: -- want the option --

22 THE COURT: Why don't you take a look at all of the  
23 them and see if there's some that you feel comfortable  
24 responding to orally. All right. Because either way, orally,  
25 if they're all orally, I, I still can rule. If one side is

1 written, I've had plenty -- the majority of my cases where the  
2 other side responds orally to a written motion. And then  
3 depending on the timing. You have a little wiggle room with  
4 this. I just can't figure out exactly if you write, you're  
5 going to have to orally argue today anyway, because that's the  
6 only time I'm going to get an oral argument in.

7           So what you can do is possibly supplement. And the  
8 Court would not allow any type of reply in writing. I will  
9 have heard it in orally. But we'll give him a chance to get  
10 his oral thoughts together, and then he can supplement his  
11 writing -- his position only because Monday we're not here.  
12 But again, I'm not in town until Monday night. So, you know,  
13 it's been my practice that people based on what's been said  
14 here, definitely there should be no surprise that they have  
15 prepared it.

16           MR. DAVIS: Yes, there's no surprise, Judge. And,  
17 you know, I -- I don't have a problem with that. I just want  
18 the option, because I've been handed a bunch of paper.

19           THE COURT: Okay. Counsel, explain to me -- you talk  
20 about option. Explain to me, you write, how I'm supposed to  
21 get it done if I rely totally on your --

22           MR. DAVIS: I beg your pardon, Judge?

23           THE COURT: How am I supposed to rule on this and  
24 have the jury ready to hear your closing arguments and  
25 instructions if I totally rely on your option to file a

1 response? Or do you agree that you will -- I'll give you some  
2 time to review it. Then you can orally argue. Then you can  
3 supplement, and I can have my decision ready by Tuesday. I  
4 can't -- it won't be ready till Tuesday morning. You  
5 understand that?

6 MR. DAVIS: Right.

7 THE COURT: Okay. All right. Do you understand  
8 that's your only option as far as writing something?

9 MR. DAVIS: Yes.

10 THE COURT: -- is to do it afterwards? Okay. Do you  
11 want this time, 15, 20 minutes to at least take a look at  
12 what --

13 MR. DAVIS: I'd prefer to take the option of looking  
14 at it over the weekend.

15 THE COURT: No. No. No. You have missed the  
16 option. The option is you get an oral argument now because you  
17 would not otherwise get one.

18 MR. DAVIS: Okay.

19 THE COURT: And then you can supplement your  
20 argument. Supplement is the better way to do it, or respond.  
21 Both the same thing.

22 MR. DAVIS: Okay. That's fine, Judge.

23 THE COURT: Within a certain amount of time. That  
24 means I need to have it by Sunday night. And then I will have  
25 a decision Tuesday morning. You understand that you're coming

1 in not knowing what my results are and you will have your  
2 closing argument that you may have to adjust. Understand?

3 MR. DAVIS: Yes.

4 THE COURT: Okay. With that understanding, I'll give  
5 you 15 minutes to look this over.

6 MR. DAVIS: And I want to just be clear. I may  
7 decide that I don't want -- need to supplement, Judge.

8 THE COURT: You may.

9 MR. DAVIS: And in the event that you don't receive  
10 anything from me --

11 THE COURT: I will know that.

12 MR. DAVIS: -- then you will go ahead and rule.

13 THE COURT: I'll rule mostly -- I rule mostly on oral  
14 arguments anyway.

15 MR. DAVIS: Yes.

16 THE COURT: That's my -- I mean, I'm used to oral  
17 arguments. So that's what I'll rule on. I might look at  
18 theirs for cases. Especially the case law. But other than  
19 that, it will be ruled on first off by oral arguments. I see  
20 the written presentations at this stage as supplemental.

21 MR. DAVIS: Right. I'm just asking for the option  
22 out of an abundance of caution.

23 THE COURT: You have it.

24 MR. DAVIS: Because I don't know what's in there.

25 THE COURT: All right.

1 MR. DAVIS: Thank you.

2 THE COURT: So 15 minutes or so, okay.

3 MR. DAVIS: Thank you.

4 MR. PETRARCA: Your Honor, would you like copies of  
5 these?

6 THE COURT: Oh, I thought I had them.

7 MR. PETRARCA: No.

8 THE COURT: Bring them on up. You can give them to  
9 Miss McCullough. All right. I'll be back out at 10 to -- I'll  
10 be back out between 3:05 and 3:10. All right.

11 MS. SCHWENDENER: Thank you, Judge.

12 THE COURT: If you're ready before that, Counsel, let  
13 my staff know.

14 MR. DAVIS: All right, Judge. Thank you.

15 (Short break taken.)

16 THE COURT: Step up.

17 MR. DAVIS: If I may before we start, Judge. Having  
18 looked at the documents, I don't think I'll need to supplement.  
19 And if Your Honor wants to rule now --

20 THE COURT: Okay.

21 MR. DAVIS: -- then I would prefer that so I know --

22 THE COURT: I will, I will try unless I have some  
23 questions. Okay. That's fine with me. And that's what I'm  
24 used to. All right.

25 So since you will get a bite at the apple after, the



1 Court would prefer you to try to keep it under -- at 10  
2 minutes --

3 MS. SCHWENDENER: Sure.

4 THE COURT: -- for your argument. And then I'll give  
5 you five minutes in rebuttal. If you need 15 minutes, Counsel,  
6 you have it. All right.

7 MR. DAVIS: Thank you, Judge.

8 THE COURT: You can both go shorter, but that's all  
9 you get so we can get to the instructions. All right.  
10 Proceed. Step up.

11 MR. PETRARCA: Judge, briefly I know you do have the  
12 written documents.

13 THE COURT: I do, and I have reviewed them. I will  
14 say unless one of you is going to deal with one issue and one  
15 other, I'm not going to have tag team.

16 MS. SCHWENDENER: Absolutely, Your Honor.

17 THE COURT: Okay. So only one person talks.

18 MR. PETRARCA: Correct.

19 MS. SCHWENDENER: Sure.

20 THE COURT: Proceed.

21 MR. PETRARCA: So, Your Honor, with respect to the  
22 punitive damages motion, the case we cite is Kolstad versus  
23 American Dental. It's a United States Supreme Court case, 527  
24 U.S. 526, 1999. In order to award punitive damages, a jury  
25 must first be presented with evidence that the defendant acted

1 with malice or reckless indifference towards the plaintiff.  
2 And the case also says that there is a, quote, positive element  
3 of conscious wrongdoing, end quote, that's required, which must  
4 demonstrate that the individual was aware that his action was  
5 in violation of federal law.

6 I mean, there's been absolutely no evidence  
7 whatsoever presented in this case that the defendants were  
8 aware that their actions were in violation of federal law. The  
9 term, you know, malice and reckless ultimately turns on the  
10 actor's state of mind. With, with respect to the defendants  
11 who didn't testify, I would respectfully submit that it's  
12 impossible to send to the jury what their state of mind was.  
13 They didn't even testify. As to the defendants who did  
14 testify, their state of mind was uncontroverted testimony that  
15 they were relying on what Mr. Izzo told them.

16 So again, I don't think either one of those goes to  
17 the jury. There's also case law that we cited that a good  
18 faith reliance upon advice of counsel may prevent imposition of  
19 punitive damages. That's Henderson versus U.S. Fidelity and  
20 Guaranty Co. that's a Fifth Circuit case, 695 F.2d --

21 THE COURT: An old Fifth Circuit case. 35 years old.  
22 All right. Go ahead.

23 MR. PETRARCA: And that's, that's all we have, Your  
24 Honor. And, and for all the other reasons stated in our  
25 written motion on punitive damages.

1 THE COURT: All right. Thank you. That's on  
2 punitive damages as to all of the, the parties.

3 MR. PETRARCA: Correct.

4 THE COURT: And which are the ones that, again, did  
5 not testify that you're asking?

6 MR. PETRARCA: Dr. Kisha McCaskill did not testify.

7 THE COURT: Linda Hawkins.

8 MR. PETRARCA: Linda Hawkins did not testify. And  
9 Felicia Johnson did not testify.

10 THE COURT: Thank you.

11 MR. PETRARCA: Thank you.

12 THE COURT: All right. Next.

13 MS. SCHWENDENER: Oh, do you want us to go in order?

14 THE COURT: Yes. You're not getting 10 minutes on  
15 each unless you prefer to answer them one at a time? It  
16 doesn't matter to me.

17 MR. DAVIS: No, Judge, that's okay.

18 THE COURT: Do them all?

19 MR. DAVIS: Yes.

20 MR. PETRARCA: I'm sorry, Judge. I misunderstood  
21 you.

22 THE COURT: No. No. No. No. Otherwise -- yes,  
23 let's just do it all.

24 MR. PETRARCA: Okay, Judge. Quickly on the Count 2  
25 is the due process one. We believe that the -- as you know,

1 the first question in a due process analysis is whether or not  
2 there was a protectable property interest. Plaintiff testified  
3 unequivocally that her attorney Sara Boucek sent a counteroffer  
4 to the school district that the Board never accepted. That's  
5 uncontroverted testimony in this case. That means that there  
6 never was a contract extension, which means there is no  
7 protectable property interest, which really ends the analysis.

8 THE COURT: And so you benefit because your people  
9 didn't know what they were doing?

10 MR. PETRARCA: I'm not sure I understand that, Your  
11 Honor.

12 THE COURT: You benefit from this argument because  
13 your people didn't know what they were doing. As they have  
14 basically testified to that they messed up and --

15 MR. PETRARCA: No, Your Honor, I'm confused because  
16 it was the plaintiff's attorney who sent the counter proposal.

17 THE COURT: That's one thing. I'm talking about the  
18 fact that I'm assuming that you're claiming that part of it is  
19 that the whole matter was void, or because it wasn't done right  
20 as you put Mr. Izzo -- as Mr. Izzo was put on and he testified.  
21 So unless, unless -- again, was he your -- he was your witness.

22 MR. PETRARCA: No, he was counsel's witness.

23 THE COURT: Okay. He was counsel's witness. So  
24 based, based on everything they said, wow, we shouldn't have  
25 done that in the first place. We had no right, so if you had

1 no right based on what the cases, some of them the ones you  
2 cited are saying is that, well, even though it doesn't look  
3 good, there's no contract. If there's no contract, then  
4 there's no property right.

5 MR. PETRARCA: But -- I understand what Your Honor's  
6 saying --

7 THE COURT: Why are you saying but? I'm sort of  
8 arguing --

9 MR. PETRARCA: Yes, but we're, we're getting -- I  
10 mean, Mr. Izzo's involvement in this happened in July. I'm  
11 talking about February. And then shortly after February --

12 THE COURT: I understand.

13 MR. PETRARCA: -- Sara Boucek was the one who sent  
14 the counter offer.

15 THE COURT: Right. There's two different things  
16 here.

17 MR. PETRARCA: Okay.

18 THE COURT: Okay. You're only arguing about what her  
19 lawyer did? Is that all you're arguing?

20 MR. PETRARCA: In this particular portion of the  
21 brief, yes.

22 THE COURT: Okay. Go ahead.

23 MR. DAVIS: And my, my simple point is it's just pure  
24 contracts 101. She sent a counter offer, which means -- which  
25 the board never accepted through plaintiff's own testimony.

1 THE COURT: I get that one. You're right. That's  
2 pretty simple. Is that all you're standing on on that?

3 MR. PETRARCA: On that one, yes. The second point is  
4 the contract extension wasn't in writing, and by the express  
5 terms of the original 2013 to 2016 contract that said that it  
6 had to be in writing, and plaintiff again testified that it was  
7 never in writing.

8 We also believe that the contract was void from its  
9 inception because the board not only never found that her goals  
10 were satisfied, but her goals were never, in fact, satisfied by  
11 the -- I won't call it clear testimony, but the testimony that  
12 we heard there was never a finding -- and there's no evidence  
13 that her goals were satisfied as Mr. Izzo said in the four  
14 corners of that document.

15 THE COURT: That's what I was talking about, Counsel.  
16 I jumped ahead. I asked you, again, it wasn't that she was  
17 said not to be performing. It was that they didn't according  
18 to the testimony that I'm assuming you're relying on, is that  
19 there was never a performance finding.

20 MR. PETRARCA: That's correct.

21 THE COURT: According to your argument. And that was  
22 because they basically screwed up. They didn't make one. They  
23 didn't, they didn't even know they had to.

24 MR. PETRARCA: That's true.

25 THE COURT: According to their testimony.

1 MR. PETRARCA: That is true.

2 THE COURT: That's what I'm saying.

3 MR. PETRARCA: Absolutely.

4 THE COURT: So they're benefiting from the fact that  
5 they didn't do what they want to do. Part of the argument is,  
6 you know. Yes.

7 MR. PETRARCA: But by the same token, Your Honor, Dr.  
8 Adams was also represented by counsel. As you saw in the  
9 counter proposal that she sent over where the first paragraph  
10 of the counter offer was --

11 THE COURT: That's a different argument.

12 MR. PETRARCA: Yes.

13 THE COURT: I was talking about the one that really  
14 has played out here in court, which is we didn't know and, no,  
15 it's not illegal. No, it's a misrepresentation. No, it's --  
16 that's the one I'm talking about.

17 MR. PETRARCA: Now, you know what I have to deal with  
18 on a daily basis, Your Honor.

19 THE COURT: Okay. All right. Okay.

20 MR. PETRARCA: And briefly if, if for some reason the  
21 Court comes to the conclusion that there was a property  
22 interest --

23 THE COURT: Property interest.

24 MR. PETRARCA: -- you know, then, then the question  
25 is what process was due here. And this is really just a, a

1 simple -- well, maybe not so simple, but it's a question of  
2 law. And as you know, Your Honor, the questions of law there's  
3 no reason for a hearing because hearings are for the purpose of  
4 determining factual issues. The question here was whether or  
5 not the school code and the contract were complied with. She  
6 was, she was actually given whatever process she was due. So  
7 they told her come on in. You didn't -- there's no finding  
8 that these goals were met. There's no evidence that these  
9 goals were met, so that was an ineffective extension.

10 She really wasn't entitled to much more. All it  
11 would have been was a declaratory judgment action. There's --  
12 there was no purpose of an evidentiary hearing is my point.

13 THE COURT: For the due process.

14 MR. PETRARCA: Correct.

15 THE COURT: In terms of due process.

16 MR. PETRARCA: Absolutely.

17 THE COURT: All right.

18 MR. PETRARCA: It was a pure question of law that  
19 should have been determined by a Court.

20 THE COURT: All right. And next.

21 MR. PETRARCA: So we, we would contend that the  
22 process that was given was appropriate under the circumstances.  
23 As you know, Your Honor, due process better than I do is a  
24 flexible concept. And whatever process is due is, is due.  
25 Thank you, Your Honor.



1 THE COURT: Do you want to go ahead? You've got  
2 another one, don't you?

3 MR. PETRARCA: We've got one more.

4 THE COURT: No. 3. Miss Schwendener.

5 MS. SCHWENDENER: Thank you, Your Honor. Yes. This  
6 is defendants' Rule 50 motion in support of Count 1,  
7 retaliation. In the event that the Court does find that there  
8 is no property interest and grants the Rule 50 motion on the  
9 due process claim, it then falls then there could be no adverse  
10 employment action because there's no valid contract to begin  
11 with.

12 Briefly, with regard to retaliation, there was no --  
13 Mr. Petrarca just talked about that there was no valid contract  
14 because she had not met a finding -- her goals -- the board had  
15 not determined that her goals had been met. In addition,  
16 plaintiff -- the contract extension was invalid from the start  
17 because Miss Boucek submitted a counter proposal to it.  
18 Plaintiff's superintendent contract explicitly states that any  
19 amendments or alterations in order to be binding on the parties  
20 have to be in writing. A contract extension was never signed  
21 under any terms or conditions. Therefore, the contract  
22 extension was invalid. And accordingly it follows there could  
23 be no retaliation as a result based on an invalid contract  
24 extension.

25 In addition, with regards to retaliation, in order

1 for a public employee's speech to be protected, the employee  
2 must establish that she spoke as a citizen on a matter of  
3 public concern. Mr. Rogers' alleged conduct was not a matter  
4 of public concern. The Seventh Circuit Court of Appeals has  
5 repeatedly held that the reporting -- that the reporting of  
6 threats of physical violence is not speech protected by the  
7 First Amendment as a matter of law. That's in Houskins versus  
8 Sheahan.

9 In addition, Your Honor, plaintiff's statements  
10 regarding the financial condition or the -- relating to the  
11 audit were not made as a private citizen, but were a part of  
12 her official duties. And Garcetti versus Ceballos holds that  
13 if an employee is not speaking as a private citizen, the  
14 employee has no First Amendment cause of action based on his or  
15 her employer's reaction to the speech. Plaintiff unequivocally  
16 testified that as superintendent she was responsible for the  
17 district's finances. The board policy made her responsible for  
18 the district's fiscal and business management. The only reason  
19 she was privy to any information regarding this forensic audit  
20 was in her role as superintendent and only discussed in the  
21 board meetings in closed session.

22 Another argument in support of why Count 1 should --  
23 or Rule 50 should be granted on Count 1 is that even if  
24 plaintiff's speech could be considered protected, she has  
25 failed to set forth evidence that it was a motivating factor in

1 the decision to rescind the offer of the contract extension.  
2 The party that bears the burden of proof on an issue is not  
3 entitled to such speculation on the pleadings. They must  
4 present evidence that there's a material issue of fact that  
5 must be resolved.

6 Plaintiff's case solely rests on a series of  
7 suspicious timing. There's been no evidence that the board  
8 members rescinded the contract extension based on the police  
9 report or the audit. Plaintiff testified that she was told --  
10 that she was never told nor did she hear any board  
11 conversation -- or any conversations amongst board members that  
12 they were going to rescind the contract extension because of  
13 the police report she filed or the, or the forensic audit she  
14 requested. The board members that did testify over the last  
15 couple days said that their vote to rescind the contract had  
16 nothing to do with the police report. Had nothing to do with  
17 the forensic audit or the alleged threat plaintiff claims  
18 against Mr. Rogers.

19 THE COURT: All right. Oh, go ahead. Anything else?

20 MS. SCHWENDENER: Sorry, Judge. I wasn't sure if I'm  
21 out of time.

22 THE COURT: No. You've only got about a minute.

23 MS. SCHWENDENER: Okay. In addition, the case law  
24 states that when there is a significant intervening event, it  
25 separates an employee's protected activity from an adverse

1 employment action. Suspicious timing will not prevail. The  
2 intervening act is that Mr. Izzo did -- counsel for the board  
3 did advise the board that their actions, their actions granting  
4 the -- or voting to extend plaintiff's contract for one year  
5 was invalid because they never made a finding she had met her  
6 goals. And again, even if -- regardless of whether her speech  
7 was protected or not, the board could not have legally extended  
8 her contract absent a finding that her performance goals were  
9 met.

10 THE COURT: All right.

11 MS. SCHWENDENER: Thank you.

12 THE COURT: Thank you. Counsel.

13 MR. DAVIS: Thank you, Judge.

14 THE COURT: The Court would appreciate you taking  
15 them in the order, in that order.

16 MR. DAVIS: In the order that they have been  
17 addressed them?

18 THE COURT: That they have been argued, yes. That  
19 would assist me.

20 MR. DAVIS: Okay.

21 THE COURT: All right.

22 MR. DAVIS: With regard to punitive damages, Judge,  
23 I'll start with the people who weren't here and counsel's  
24 statement that we don't know what their state of mind is.  
25 Punitive damage turns on malice, willfulness, and intent. And

1 the purpose is to punish people. Not only people who  
2 intentionally act, but people who recklessly disregard the  
3 constitutional rights or the violation of somebody's  
4 constitutional right.

5 The evidence in this case shows that everybody in  
6 that board knew that Mr. Rogers and Janet Rogers had animus  
7 towards Dr. Adams my client based on the police report. The  
8 evidence shows that they all willingly went along, voted. They  
9 sat in meetings. In particular the meeting in July 22nd. Dr.  
10 McCaskill brought up what about the goals we've been -- she had  
11 for a year and a half that we said she's been working under?  
12 We're going to now pull those goals all of a sudden? And  
13 they -- Janet Rogers said, hey, we're going to call those  
14 generic and say they don't count. And McCaskill ended up  
15 voting for the rescission of the contract on August 17th.

16 The same thing with Betty Johnson. Oh, she's going  
17 to stand on those goals. You know she's going to bring up the  
18 goal cycle. But she went along anyway. Same with Gloria  
19 Johnson. So even though individuals aren't here and there  
20 hasn't been direct evidence about what they -- specifically  
21 their state of mind, I think the evidence is that they have  
22 had -- demonstrated a reckless disregard for Dr. Adams'  
23 constitutional rights in that they went along with this.

24 And as far as the malice, Mr. Rogers testified that  
25 they had a progression. That they started in August and said

1 we want her out. We want to do this. And they said -- the  
2 others told him, well, let's do it through a process. We can't  
3 do it right away. And so month after month after month they  
4 took disciplinary actions against my client. He said in  
5 October they took an action, in November they took an action.  
6 In December they reversed an action she took, which totally  
7 humiliated her. In January they suspended her. All of these  
8 acts were official acts by the board.

9 She was suspended. None of these acts were  
10 individual acts. None of the individual board members had  
11 power to do this without the support of the other defendants.  
12 So I think the intent of the other defendants, the evidence is  
13 clear what the intent was. And at a minimum those who weren't  
14 here have demonstrated a reckless disregard for Dr. Adams'  
15 constitutional rights. And I think as far as malice is  
16 concerned, I can't think of anything more malicious than what  
17 we've heard Mr. Rogers say on the tapes about Dr. Adams.

18 He did everything in his power to disparage her. He  
19 said he basically wanted her out, and he wouldn't even -- he  
20 interfered in every way he could with her ability to even  
21 operate the district. And he had her basically in a situation  
22 where day-to-day she just went to work. Her husband testified  
23 she came home, every day she'd try to get herself up, and every  
24 day she experienced things at work that just knocked her right  
25 back down. This went on for almost a year.

1           Mr. Rogers, all the other defendants knew she was in  
2 a medical treatment because they got the doctor's statement  
3 starting in August that she was on medical leave under a  
4 doctor's care. And yet they continued. And that kind of  
5 evidence that you know somebody's ill and you keep pounding is  
6 evidence of malice and willfulness. And I think it's enough to  
7 justify punitive damages in this case.

8           With regard to due process, counsel talks about there  
9 was no contract. There was no meeting of the minds. He  
10 misstates the evidence. The evidence is that they voted on  
11 February 23rd to extend the contract. A formal vote. The  
12 evidence is that's all they had to do. According to the  
13 district's policy that's how they did extensions. The evidence  
14 is there was no follow on that was required. There was nothing  
15 to be signed. They never pointed out any instance where the  
16 contract had to be redone. We were talking about extending an  
17 existing contract.

18           So the integration clause that counsel pointed to is  
19 not dispositive in this case. The integration clause says if  
20 you're going to amend this contract, it's got to be in writing.  
21 The evidence is there were no amendments. That this contract  
22 was extended on its own exact terms. Nothing changed. What  
23 happened months after the contract was extended was Sara Boucek  
24 approached Mr. Izzo about a new contract. This is a novation.  
25 Talk about contracts 101. That wasn't a counteroffer. They

1 had already accepted and voted on the contract extension. What  
2 happened months later wasn't a counteroffer. She had already  
3 agreed, yes, I'll accept the extension on those terms.

4 She then looked out in the market and saw you what  
5 she thought was an opportunity because she was underpaid  
6 vis-a-vis her contemporaries, and so she said let me take a  
7 flier and say will they give me a new contract. And so she  
8 took the old contract and she started modifying it as a  
9 template for the new contract. It said it was a new contract.  
10 And as far as the fact that it was a counteroffer, it never  
11 even went to the board. The evidence is the only person she  
12 approached regarding that was Janet Rogers. Janet Rogers did  
13 not even broach the subject to the board until July.

14 So this idea that it was a counteroffer to the board,  
15 there was no counteroffer. The other board members never even  
16 knew she had brought this up. And the evidence is clear in  
17 July 22nd they were shocked. New contract? When did this come  
18 up? So there was no counteroffer. There was an extension that  
19 was duly voted.

20 Further, I think there's confusion here between the  
21 extension and the contract and what due process turns. Due  
22 process only requires more than a mere unilateral expectancy of  
23 employment. My client -- that happened when they voted at a  
24 formal vote under Illinois law that they were lawfully  
25 authorized to do to extend her contract. That told her her



1 contract on those terms is extended for more than another year.  
2 She had a reasonable expectancy at that point. Whether the  
3 contract extension itself failed is a severable issue.

4 Further, not only did she have a due process right  
5 based on the practice of the district, which they already said  
6 that was the only thing they did to extend contracts. They  
7 took a formal vote. There was no other process. There was no  
8 additional signing. There was no other negotiation. All they  
9 did, that was their practice taking the vote. But beyond that,  
10 the Seventh Circuit in a similar case, in the Hostra case where  
11 an extension of a contract was considered invalid under  
12 Illinois law, the Court said even if that's true, only that  
13 extension would have been invalid. The rest of the contract is  
14 still a valid source of rights as far as due process is  
15 concerned.

16 So the extension failing is one thing. The fact that  
17 she had a contract signed and authorized is another source of  
18 property rights.

19 THE COURT: So that you're saying that would have  
20 been for the remainder of her --

21 MR. DAVIS: Exactly.

22 THE COURT: The three years. Which was about what,  
23 four months, six months?

24 MR. DAVIS: No, it was over a year. They gave her  
25 the extension in February of 2015.

1 THE COURT: 2015. All right.

2 MR. DAVIS: The contract didn't expire till June --

3 THE COURT: Till June of 2016.

4 MR. DAVIS: -- 30th, 2016.

5 THE COURT: All right. Thank you, Counsel. Go  
6 ahead.

7 MR. DAVIS: And they continued to honor that contract  
8 even after they took the rescission vote. So that contract was  
9 valid. That contract didn't go away. And that contract  
10 contained the clause talking about extension of her contract.  
11 And the extension was done vis-a-vis that clause.

12 THE COURT: Would it matter, Counsel, that the fact  
13 that even it appears that from the contract that everybody  
14 keeps referring to, there was a certain point, I guess June of  
15 each year after the February that she was supposed to -- the  
16 board shall review her, and they did not?

17 MR. DAVIS: Well, they didn't say they did not.  
18 Actually Mr. Rogers said he couldn't say that they did not.

19 THE COURT: Someone on the stand said it. I don't  
20 know if it was Mr. --

21 MR. DAVIS: And Mr. Izzo said he didn't know whether  
22 they did that. That was what I pointed out in the case that --

23 THE COURT: Didn't your client say they didn't?

24 MR. DAVIS: My client said they did in the goals  
25 chart. One of the second bubbles was June 1st.

1 THE COURT: Oh, for the retreat.

2 MR. DAVIS: Right.

3 THE COURT: Okay.

4 MR. DAVIS: June 1st sit down, review where we are,  
5 develop the action plan.

6 THE COURT: And how do you connect the retreat --  
7 bubble retreat goals with the ones that were actually in the  
8 contract?

9 MR. DAVIS: Because that as my client testified was  
10 the purpose of the retreat was to implement the bubble process.

11 THE COURT: Was that referred to in the contract that  
12 you said is, is valid?

13 MR. DAVIS: No. The contract doesn't specify that in  
14 retreats they'll -- but it does specify that they will by  
15 June 1st look at the goals, assess the goals see whether they  
16 need to be modified.

17 THE COURT: But didn't the contract itself have goals  
18 in it? Superintendent goals one, two? Wasn't that there?

19 MR. DAVIS: The contract had general goals. And then  
20 it had a provision that said by June 1st of each year we'll  
21 look at whether these --

22 THE COURT: The superintendent goals. They were  
23 general but -- you may call them general, but they were in the  
24 contract, were they not?

25 MR. DAVIS: Yes. Yes.

1 THE COURT: All right. And the bubble goals were not  
2 attached to that contract or referred to by name in that  
3 contract. They were at a retreat, and referred to both what  
4 the board would do and what the superintendent would do, is  
5 that correct? That's what those bubble ones -- they had  
6 different ones. Some said the board. Some said  
7 superintendent. Some said both.

8 MR. DAVIS: It's our contention that there is no  
9 division between the bubble goals and the contract.

10 THE COURT: All right.

11 MR. DAVIS: The contract said the goals had to be  
12 specific. Had we made the argument that the contract goals was  
13 the goals, they'd say those are not specific.

14 THE COURT: I'm not worried about their argument.

15 MR. DAVIS: Okay.

16 THE COURT: I'm asking these questions for myself.

17 MR. DAVIS: The contract laid out specific goals and  
18 indicators. And it also said by June 1st of each year they  
19 would sit down and look at the goals. And that process  
20 happened in this case. The testimony uncontroverted is that it  
21 happened in 2013 by October as required by the contract, and it  
22 happened by June 1st of 2014. Nobody testified that it didn't  
23 happen, and Dr. Adams testified that it did happen. That in  
24 June 2014 they looked at her goals, assessed the goals.

25 She also testified that they regularly from that

1 point on assessed the goals. They assessed the goals in  
2 December she said, 2014. They had a retreat in 2015 where they  
3 assessed the goals. And she stated that the evaluation they  
4 gave her was based on those performance goals. And nobody has  
5 presented any evidence to controvert that. And nobody has  
6 presented any evidence that there was some separate process.  
7 What evidence does exist is that Janet Rogers after July 10th  
8 set on a -- with vengeance against my client and looked for  
9 anything she could do to bring down Dr. Adams.

10 THE COURT: All right. You're getting into argument  
11 beyond the argument. This is more jury argument. Can you go  
12 on to the third point, please.

13 MR. DAVIS: Sure. So we think the due process  
14 element is satisfied. As far as the First Amendment issue,  
15 counsel has basically just rehashed, regurgitated --

16 THE COURT: You mean retaliation?

17 MR. DAVIS: Yes, retaliation. The argument you dealt  
18 with on summary judgment. You looked at Houskins on summary  
19 judgment and distinguished Houskins. The Kubiak case, same  
20 thing. The speech here, even though she had personal safety  
21 issues, which is obvious, the speech was a matter of public  
22 concern because what she was talking about and what the  
23 detective testified to is she said that Tyrone Rogers called  
24 her up and said she's itching for an ass kicking when she asked  
25 for an audit.

1           So a public official made a threat of physical  
2 violence towards her when she asked for an audit. That is a  
3 matter that the public would be concerned about. And that is  
4 in the -- the detective testified about that. Dr. Adams  
5 testified about that. Mr. Rogers says he didn't make the  
6 statement. But there's credible evidence that he did. The  
7 phone records show he called her. He testified he didn't  
8 recall whether he called her. Well, if he didn't recall  
9 whether he called her, how could he be so firm that he didn't  
10 say what she said he said?

11           And so we think that the speech issue has been dealt  
12 with by the Court. There's been no new evidence that would  
13 change the Court's analysis at summary judgment. And so we  
14 think the speech element has been taken care of.

15           And as far as the retaliation, we think there's an  
16 abundance, an abundance of evidence to suggest that what  
17 happened here is Dr. Adams was told she had goals. Dr. Adams  
18 performed under the goals. Dr. Adams performed well under the  
19 goals for two years, and everything was okay until July 10th  
20 when she made a report against Tyrone Rogers. And at that  
21 point they unilaterally decided to say those goals didn't  
22 count. And again as far as the due process, the evidence says  
23 that the first time she was told that those goals didn't count  
24 was at -- on August 17th when they called her in the room to  
25 rescind the extension.

1 Nobody gave her any indication -- nobody told her  
2 anything. And when she walked in that room and she was shocked  
3 and said, what do you mean? I've been working under these  
4 goals for over a year. So the evidence is clear that they  
5 moved the goal post. And Attorney Izzo was brought in by Janet  
6 Rogers --

7 THE COURT: Excuse me, Counsel. When was the  
8 contract with the other -- with the requirements within the  
9 contract, when was that executed?

10 MR. DAVIS: I'm not sure I understand the question.

11 THE COURT: The contract, the beginning of the  
12 three-year, the first contract she had.

13 MR. DAVIS: 2013.

14 THE COURT: Right. So that was -- and those goals  
15 you agree were in that contract? There was --

16 MR. DAVIS: Yes.

17 THE COURT: All right. So how are you saying they  
18 moved the goal post?

19 MR. DAVIS: I'm saying they moved the goal post when  
20 in 2015 they said unilaterally that the goal cycle that she had  
21 been working under, which again, implemented the goals in the  
22 contract, no longer counted. She had worked under them for a  
23 year and a half. She had been reviewed under them. She had  
24 appeared at retreats. They told her great job. You're doing a  
25 good thing. And then when they wanted to retaliate on July

1 22nd, they said, all that stuff is generic. It doesn't mean  
2 anything. They knew it was wrong.

3 They said, well, you know she's going to bring up the  
4 goals and what we've been telling her at these retreats. And  
5 they didn't care. And they did it deliberately. And they did  
6 it intentionally, and they did it collectively to punish her.  
7 And that's evidence the jury is entitled to decide whom they  
8 believe here. Do they believe Mr. Izzo, a biased witness who  
9 came in who said he didn't even know about the goals process?

10 THE COURT: All right, Counsel.

11 MR. DAVIS: And how they had implemented it. He did  
12 no independent investigation of anything. And finally, he  
13 admitted that if they lied to him, the advice he gave to them  
14 was completely wrong. So the fact question is did they lie to  
15 Mr. Izzo? Did Janet Rogers, did the rest of them make up this,  
16 oh, we never did goals, we never declared goals simply to find  
17 an out for the contract extension in order to punish her? And  
18 that's a question. There's ample evidence from which  
19 reasonable jurors could determine that was all done to punish  
20 her, and everything else is a pretext.

21 Further, there's disparate treatment, like pretext --

22 THE COURT: All right.

23 MR. DAVIS: -- evidence also that goes to showing.  
24 Counsel brought up there's no direct evidence --

25 THE COURT: Counsel, I need you to wind up in a



1 minute.

2 MR. DAVIS: Okay. I'll wind up in a second, Judge.

3 THE COURT: All right. Okay. Go ahead.

4 MR. DAVIS: Counsel made a point there's no direct  
5 evidence. The law doesn't require direct evidence. We showed  
6 ample evidence of disparate treatment. They punished her for a  
7 \$175,000 under billing somebody else made that didn't cost them  
8 a dime. Yet somebody who blew through a \$4 million deficit of  
9 their money, which they never got back, they didn't punish at  
10 all.

11 So we think the disparate treatment, the timing,  
12 counsel said, oh, it wasn't that big a deal, the same day she  
13 made the police -- the evidence is Janet Rogers said she got a  
14 call the police was at the school. And she came in that same  
15 day and initiated this process. So it's not suspicious timing.  
16 The suspicion would be if we didn't reasonably see a connection  
17 and we just thought this was all pure coincidence. Thank you,  
18 Judge.

19 THE COURT: Thank you, Counsel. Very briefly,  
20 Counsel.

21 MR. PETRARCA: Very very briefly.

22 THE COURT: So I cut you to three minutes.

23 MR. PETRARCA: Thank you, Judge. Your Honor, I'd  
24 like to point out in your written memorandum opinion and order  
25 on our motion for summary judgment you stated that there were,

1 quote, sufficient factual questions surrounding the extension,  
2 end quote. I believe you now have all the facts, and I believe  
3 that judgment on these Rule 50 motions is appropriate at this  
4 point in the defendants' favor.

5 With respect to the punitive damages, very quickly --

6 THE COURT: So you're arguing that after this -- at  
7 this point in the trial there's no further questions?

8 MR. PETRARCA: Correct.

9 THE COURT: Okay.

10 MR. PETRARCA: And the facts are crystal clear as  
11 Your Honor --

12 THE COURT: Crystal clear.

13 MR. PETRARCA: Everything that happened after  
14 August 17th is meaningless to the punitive damages claim  
15 because the act of retaliation was the rescinding of the  
16 contract on August 17th. Counsel stated that there was animus.  
17 Animus is not the test under punitive damages. That's not what  
18 Kolstad says. That's not even close to what it says.

19 As far as the contract, Judge, I, I just have to  
20 bring this out. I've been waiting to do this for five days.  
21 As Your Honor has correctly pointed out moments ago, these  
22 performance goals that are in paragraph 3 of the  
23 superintendent's contract, these are the performance goals that  
24 have to be satisfied before you extend the contract. You can  
25 talk about circles and district goals and everything all you

1 want. These are the ones that matter. There's no evidence in  
2 the record that these were satisfied. There's no evidence that  
3 this contract was even discussed at this retreat or whatever  
4 they called it.

5 Now, what bothers me the most about this is the  
6 paragraph that follows these goals. It says, further, the  
7 superintendent and the board shall consult no later than  
8 October 1, 2013 and June 1st of each contract year thereafter  
9 in order to mutually determine whether such goals should be  
10 amended. It's talking about the goals that are right above it.  
11 And it says if you want to amend these goals at these meetings  
12 on June 1st, then you have to put something in paper, amend the  
13 goals, attach it to the contract. This isn't an evaluation of  
14 the superintendent. This is talking about amending these  
15 goals.

16 And as Mr. Izzo correctly pointed out, it's just a  
17 simple matter of reading this paragraph. If you don't think  
18 that these goals need amending, there's nothing to do. You  
19 just continue on with these goals for the length of the  
20 three-year contract. And at the conclusion of the three-year  
21 contract, if you wish to extend it, then these have to be  
22 satisfied. That's all this paragraph says. It's very simple.

23 THE COURT: Anything else quickly?

24 MR. PETRARCA: That's it, Judge. Thanks.

25 THE COURT: All right. Thank you very much. There's

1 one case I want to take a look at. I'll be right back. Thank  
2 you. And if you all could at least get your instructions.

3 MR. PETRARCA: Yes.

4 MR. DAVIS: Okay.

5 THE COURT: At least go ahead and push confidently  
6 forward.

7 (Short break taken.)

8 THE COURT: All right. Thank you for your arguments.  
9 Motions for judgment as a matter of law under Rule 50 have to  
10 be looked at in the light most favorable to the nonmoving  
11 party. And this Court does take that seriously. And so let me  
12 start, first of all, there are two defendants Linda Hawkins and  
13 Felicia Johnson. In no way, shape, or form, not only were they  
14 not present, but they weren't even identified as speaking in  
15 any of the tapes to my remembrance.

16 And counsel for the plaintiff says that they should  
17 be held individually -- argues that they should be held  
18 individually accountable just because they were individuals on  
19 the board, and clearly from the record signed off --

20 MR. DAVIS: May I Judge. I don't want to interrupt.  
21 I just want to correct something.

22 THE COURT: Okay. If -- go ahead.

23 MR. DAVIS: Betty Johnson testified it was Linda  
24 Hawkins who said see ya --

25 THE COURT: Oh, she's the one who said it?

1 MR. DAVIS: -- alligator. That was Linda Hawkins. I  
2 made her specifically say.

3 THE COURT: See ya alligator.

4 MR. DAVIS: See ya alligator. That was Linda  
5 Hawkins.

6 THE COURT: Okay.

7 MS. SCHWENDENER: Judge, counsel's incorrect.  
8 Miss Johnson said that she heard that statement, but I think  
9 she said she did not know who said that statement.

10 MR. DAVIS: No --

11 THE COURT: Well, everybody can stop. I got the  
12 record.

13 MR. DAVIS: Okay.

14 THE COURT: So she was right after 1:00 o'clock,  
15 right?

16 MR. DAVIS: Yes, Judge.

17 THE COURT: All right. Tracey, I'm going to look and  
18 you're going to look too.

19 (Brief pause.)

20 THE COURT: I'll put this on the record as to --  
21 well, first let's put on the record, this -- this doesn't even  
22 have to separate out. I was trying to be organized, but we'll  
23 save that for later.

24 All right. As to punitives damages, and this  
25 includes the see ya alligator, this Court finds that the

1 plaintiff even looking at the issue on punitive damages and  
2 what's required in the light most favorable to the nonmoving  
3 party, there has been no showing that rises to those factors of  
4 punitive damages.

5 A lack of decorum, which is no doubt, and showing of  
6 ignorance in various types should be horribly embarrassing to  
7 the district and to the taxpayers, to the children, but it does  
8 not equal just by that lack of decorum and the showing of  
9 ignorance that punitive damages should be applicable here and  
10 should go any further than this point, especially where there  
11 is some unclear testimony outside of the tapes, which frankly  
12 were painful to listen to just by the sense of just pure  
13 unprofessionalism, but unclear testimony as to who did what,  
14 said what, when. Everybody is pointing in different  
15 directions.

16 And then further for other rulings that the Court  
17 will make, punitive damages as to all defendants, motions for  
18 directed verdict is granted.

19 As to the due process claim and the fact that there  
20 is a property right that was taken away without her being able  
21 to have a hearing or have any process according to plaintiff,  
22 it is clear that Dr. Adams had a three-year contract. And a  
23 lot of these issues started almost in the middle of the  
24 contract. It was also clear that Dr. Adams was for a time very  
25 well thought of by the board. And this Court suspects that the

1 board had even better than they expected to have as a  
2 superintendent, at least for a while. That she was performing.  
3 It wasn't high marks, but she was performing, and they were  
4 pleased with her. In particular two of the ones that seemed to  
5 be the strongest voices that plaintiff relies on in her case,  
6 that would be Mr. and Mrs. Rogers.

7           And that three-year contract clearly had the ability  
8 to be extended another year. And the problem is even when  
9 looking in the light most favorable to the nonmoving party is  
10 that all of the misstatements and misunderstandings to what the  
11 contract as is written, as was relied on by both parties, by  
12 all parties was here, there was no contract beyond that first  
13 three-year property right. There was no contract beyond that.

14           And so for her to even -- the Court cannot find at  
15 this point even looking at the light most -- the evidence in  
16 the light most favorable to Dr. Adams that she didn't get due  
17 process when on that contract even the year and a half after  
18 she started having all the problems, she was sick at home, but  
19 she was still getting paid. She got that contract paid to the  
20 end. She did not get the renewal of the -- or the extension of  
21 the year. But between -- I mean, the contract clearly states  
22 that there were general requirements -- I mean, there were  
23 specific requirements -- or let me say this, superintendent  
24 requirements. And those were not gone over, performance  
25 requirements -- performance requirements.

1           And despite the fact that, yes, we talked to her, we  
2 did the general ones, the testimony was that it was the  
3 retreat, the retreat. The bubble display was shown many times,  
4 but the contract did have performance requirements. It's not  
5 like it was vague. You can call them general all you want, but  
6 it's not like it was vague. That's what's written. And that  
7 was not gone over with her, and -- before they decided to give  
8 her this extension, which again, does show they thought she was  
9 good. They thought she was so good they wanted to lock her  
10 down with an extension. They didn't do it properly.

11           She continued to work on it, and then after that she  
12 was trying to change or wanted to change the original contract,  
13 which you couldn't do just by doing that. It was already  
14 signed off and done. That contract was there. And so there  
15 was a lot of misunderstandings, misstatements, misapprehensions  
16 by everybody involved. And yes, they all had lawyers. And  
17 frankly I just don't know -- clearly the people who were here  
18 in this room weren't part of it. But it was just a mess. A  
19 very very unfortunate mess, but due process showing is not  
20 here, and the Court will find that Rule 50 will be granted.  
21 Motion under Rule 50 will be granted on the due process claim.

22           As to the retaliation, when I look at the evidence in  
23 the favor of the nonmoving party, the motion is denied as to  
24 retaliation, mostly based on the timing. Based on the Court  
25 can infer and the jury could infer that there was a problem



1 here, and they retaliated against her because of -- they  
2 thought about the audit might get them in trouble maybe or they  
3 thought about definitely decided to -- when she filed -- she  
4 says she filed a police report. The evidence shows -- is in  
5 her favor that she filed a police report. There's evidence  
6 that's in the record that shows that she says he did say that,  
7 and other people heard things later. And even though he denies  
8 it, that's a credibility determination for the jury.

9 And so the Court does find as to the board, as to  
10 Gloria Johnson, as to Betty Johnson, as to Kisha McCaskill, and  
11 as to Janet Rogers and Tyrone Rogers that they're still in the  
12 case. As to Linda Hawkins just because she said see ya later  
13 alligator, that alone does not show that -- as to how she  
14 reacted, whether she reacted to any of this timeline. These  
15 people just have not been referred to except for that one  
16 little statement. That's as to Linda Hawkins and Felicia  
17 Johnson. Neither one of them except for that one statement  
18 that is not even certain based on the testimony unless we can  
19 see it and find it here that Miss Hawkins should be in this  
20 case.

21 So Miss Hawkins and Miss Johnson are granted directed  
22 verdict as to everything. And all the other parties are in  
23 with retaliation. And that's the Court's finding. All right.

24 MR. PETRARCA: Your Honor, may I clarify something  
25 please. With respect to the individual defendants, my

1 understanding is that the punitive damages, the rule has been  
2 granted but --

3 THE COURT: All of them.

4 MR. PETRARCA: I guess my issue is so, so they could  
5 only have acted as a Board of Education. So, for example, the  
6 jury can't find --

7 THE COURT: So you're saying still as to punitive?  
8 Punitive is gone.

9 MR. PETRARCA: No. No. No. I'm talking, I'm  
10 talking about the retaliation claim now.

11 THE COURT: Okay.

12 MR. PETRARCA: So I just want to clarify. So the  
13 board can only act by Illinois law through a majority of its  
14 members. So it, it would be literally impossible for the jury  
15 to find, for example, that Tyrone Rogers retaliated against the  
16 plaintiff but none of the other board members did and hold  
17 Tyrone Rogers liable. That can't happen. It's either got to  
18 be the board is liable or they're not.

19 MR. DAVIS: Well, there is ratification, Judge. So  
20 it's not impossible. Monell allows for ratification. If  
21 Tyrone Rogers acted and there was a policy or a custom and  
22 practice that was the driving force --

23 THE COURT: But that's not what's here, Counsel.

24 MR. DAVIS: And they ratified his action.

25 THE COURT: Counsel is right --

1 MR. DAVIS: I'm just saying counsel --

2 THE COURT: No. No. Counsel is right in that all  
3 of -- you want all of the -- you want all the individuals gone?  
4 No, you just -- that's part of an instruction that they all  
5 have -- so you know what, you're right. Retaliation is back  
6 reinstated for Hawkins and Johnson. They're part of the board.  
7 It's got to be all or nothing, and I am not going to dismiss  
8 all those individuals. All right. So we just have to craft an  
9 instruction that will show that they know that if the, if the  
10 individual defendants are found to be retali -- are, are as a  
11 group retaliating against -- in their votes, then it's  
12 retaliation, and the retaliation of her being not, not treated  
13 right they acted in retaliatory fashion against her because of  
14 one of these -- one or both of these actions. That it's the  
15 board, and that one person cannot hold them against them. So  
16 their vote basically --

17 MR. DAVIS: It only requires a majority of the vote.

18 THE COURT: Or the majority of the vote.

19 MR. DAVIS: Yes.

20 THE COURT: Right. Okay. So the instruction has to  
21 show that. But I am not dismissing retaliation.

22 MR. DAVIS: Thank you, Judge.

23 THE COURT: All right. So one is in. And if it's  
24 not right, then you all go ahead and take it up and spend more  
25 money.

1 All right. Let's get to -- so instructions have been  
2 curbed down considerably. And because they have been trimmed  
3 down considerably, let's take a quick look at them while Tracey  
4 is here and while I'm here. I will be reading through this on  
5 the record. We have our numbers right. You all get yours out.  
6 What will happen is I will keep in the ones that may even  
7 address the ones that you are -- that you are -- that are no  
8 longer in because the case -- because the charges have been  
9 dismissed, the complaint has been dismissed. Not keep them in  
10 to read, but keep them in as a record so that your, your  
11 position can be preserved.

12 MR. DAVIS: And I had proposed instructions, Judge.  
13 Is it time --

14 THE COURT: All right. This is the time to bring  
15 them to me, yes.

16 MR. DAVIS: Okay.

17 THE COURT: Or do you have them? If you both have  
18 your own copies for each other and copies for me, give them to  
19 my court reporter, and we'll go over them.

20 MR. DAVIS: The procedural due process will be out  
21 now.

22 THE COURT: But that will be part of the record.

23 MR. DAVIS: But the limiting won't, yes.

24 THE COURT: It will be part of the record, yes.

25 MR. DAVIS: I guess the limiting might not be needed

1 now.

2 THE COURT: The limiting won't be needed either.

3 MR. DAVIS: Since Izzo is --

4 THE COURT: That's right. Okay. So let's start out.  
5 Instruction conference on the record, Dr. Denean Adams, Board  
6 of Harvey, et cetera, 15 C 8144.

7 1.01, functions of the Court and the jury is granted.  
8 Pipe up when there's an objection. Is granted -- or given, I'm  
9 sorry. There being no objection. 1.02, pattern instructions  
10 is given, there being --

11 MR. DAVIS: I'm sorry, Judge. I don't see a 1.02. I  
12 see two 1.01s.

13 THE COURT: No. I gave, I gave you all another set.  
14 It's exactly -- do you have 1.02?

15 MS. SCHWENDENER: We have it, Judge.

16 THE COURT: It was the second set that we got this  
17 morning.

18 MR. DAVIS: Oh, okay. Not the one we got yesterday.

19 THE COURT: Oh, no. No. No. No. No. Get rid of  
20 that one.

21 MR. DAVIS: I got you.

22 THE COURT: We were all too tired.

23 MR. DAVIS: I'm sorry to interrupt. Go right ahead.

24 THE COURT: That's okay. Are you ready?

25 MR. DAVIS: Yes, I will be.

1 THE COURT: No, I'm going to -- no. No, Counsel.  
2 I'll wait till you get it. Let me make sure I -- make sure I'm  
3 all together too. If not, I can also have someone bring you  
4 out another one.

5 MR. DAVIS: Yes, that might be easier --

6 THE COURT: All right. Well, we'll do that.

7 MR. DAVIS: -- for expediency, Judge.

8 THE COURT: We'll do that. That's okay. No problem.

9 MR. DAVIS: I apologize.

10 THE COURT: No problem. So we've got the  
11 stipulation.

12 MR. DAVIS: Yes, I have a copy of it.

13 THE COURT: So, so that's something I'm assuming  
14 everybody agrees is going to go back. And that, that  
15 stipulation has to be broken down to just show the other -- so  
16 it doesn't show all the other information.

17 MR. DAVIS: Right.

18 THE COURT: I don't send that back.

19 MR. DAVIS: Just the people in the box.

20 THE COURT: Yes, just the people in the box.

21 MR. DAVIS: All right.

22 THE COURT: All right. So it will come out in a  
23 second. They've got to be able to print it off. So again, I  
24 go through the instructions. I read the instructions. You  
25 will have your copy. My staff will be checking -- here in the

1 courtroom will be following as I'm reading. And again, don't  
2 interrupt the instructions. I'll have your input at the close.  
3 The CSO will be present for the instructions, for the  
4 instructions and to get the jury, take them back to deliberate.

5 We start at 10:00 o'clock. We'll do the closing  
6 arguments. Depending on how long they actually are, if they  
7 last 40 and 40, that's over an hour, then the Court will take a  
8 break for them. I take a really short break, make them leave  
9 their pads in the chair, and then they just go use the bathroom  
10 and line back up. All right. Depending on how it's going, I  
11 might not do that. They may get through them fine. I  
12 definitely take a break before I give instructions. That will  
13 our last moments to clean up or fix up anything we need to.

14 Again, depending on where we are, what I might do is  
15 while they're in this mode, go ahead and let them get their  
16 lunch and have it there but not to eat it just before I do  
17 instructions. I do instructions, they have their lunch.  
18 Otherwise after instructions they'll be taken to go and eat as  
19 a group under the CSO's charge. And then you will meet back  
20 here at 5.

21 As to what goes back to the jury, the stipulation  
22 goes back to the jury. What else do you want to go back to the  
23 jury?

24 MR. DAVIS: Well, I'd like the exhibits that --

25 THE COURT: All the exhibits will not go back.

1 MR. DAVIS: Okay.

2 THE COURT: Absolutely not.

3 MR. DAVIS: Well, what's the --

4 THE COURT: The contract can go back because that's  
5 been referred to time and time and time again. That can go  
6 back.

7 MR. DAVIS: The bubble chart, I guess we don't need  
8 that. The chart.

9 THE COURT: Yes, the bubble chart. That really  
10 doesn't apply. Yes, I wouldn't send that back. That would be  
11 confusing. What else that has been in the evidence?

12 MR. DAVIS: The contract, Judge. The --

13 THE COURT: Again, now, Counsel, that does not mean  
14 that during your closing you can't use and have the Court put  
15 up on the screen some things you might --

16 MR. DAVIS: Yes.

17 THE COURT: That have been admitted into evidence.  
18 You can do that. You need to have them all lined up, though,  
19 so but I have no problem with doing it. And I would just  
20 suggest that you put your computer -- to plaintiff's counsel.

21 MR. DAVIS: Thank you.

22 THE COURT: Thank you, Meaghan. Have, have your  
23 laptop at the stand. I'm assuming you're not going to want to  
24 sit and do that. I'll tell you off the record.

25 (Off the record discussion.)



1 THE COURT: All right. But that's the very last  
2 thing I do, which will be after we send them on their way. And  
3 I'll get together with you and say, again, what evidence are we  
4 sending back with them? Okay. So that would be time for you  
5 to present that. Okay?

6 MR. DAVIS: Right.

7 THE COURT: All right. So let's go back to it. So  
8 you have 102 now, Counsel? 101, 102.

9 MR. DAVIS: Yes. I have 102 on the back.

10 THE COURT: Okay. They probably shortened --

11 MR. DAVIS: I've got it, Judge.

12 THE COURT: All right. Given, there being no  
13 objection. You'll have the final copy with you. When I speak,  
14 you'll have the same one I'm reading from. You might get it  
15 just before I speak, but you'll have it. All right. 103.

16 MS. SCHWENDENER: Judge, we submitted a new  
17 instruction on --

18 THE COURT: And that's the one -- new one you  
19 submitted?

20 MS. SCHWENDENER: Yes, Your Honor. It's a public  
21 Board of Education, not a municipal --

22 THE COURT: All right. And you have an objection  
23 that, Counsel?

24 MR. DAVIS: I don't have any objection to that, no,  
25 Judge.

1 THE COURT: All right. So 103, defendants' No. 1.  
2 And if I'm not saying it, these will all be the plaintiff's,  
3 Counsel. You know, the 101, 102. You're bringing the case.  
4 These are standard. No objection. So 101 and 102, they're  
5 yours. But since we don't have a numbered copy of yours, I'm  
6 just going to refer to them as yours, and we'll, you know, give  
7 you the numbered copy after that. Okay.

8 MR. DAVIS: Okay.

9 THE COURT: All right. Or at least I'll mention it  
10 on the record. Defendants' No. 1 is 103, is given with no  
11 objection. No. 104, and that's the stipulation one. The  
12 evidence consists of the testimony and the exhibits admitted  
13 into evidence and by stipulation. And the brackets will be  
14 gone. There should be a period after that. And then the  
15 brackets will be released from the second paragraph. A  
16 stipulation is an agreement between both sides that a person  
17 would have given certain testimony. I'm assuming that's what  
18 you want, is that correct? Not that it was necessarily true.

19 MS. SCHWENDENER: Yes, Your Honor, that's correct.

20 MR. DAVIS: Yes, Judge.

21 THE COURT: So the first bracket in the second  
22 paragraph will not be given. The second bracketed material  
23 will be given, and the bracketed material will be moved. All  
24 right.

25 MR. DAVIS: Yes.

1 THE COURT: No objection.

2 MS. SCHWENDENER: No objection.

3 THE COURT: 106, what is not evidence. Given, there  
4 being no objection.

5 MR. DAVIS: Yes.

6 THE COURT: 107, note taking. Given, there being no  
7 objection.

8 MR. DAVIS: Yes.

9 THE COURT: 108, consideration of all evidence  
10 regardless of who produced it. Given, there being no  
11 objection.

12 MR. DAVIS: Yes.

13 THE COURT: 111, weighing the evidence. Given, there  
14 being no objection.

15 MR. DAVIS: Yes.

16 THE COURT: 112, definition of direct and  
17 circumstantial evidence. Given, there being no objection.

18 MR. DAVIS: Right.

19 THE COURT: No. 113, testimony of witnesses.

20 Deciding what to believe. Given, there being no objection.

21 Let's see, any witness including any party to the case, the  
22 brackets should be removed and that bracketed portion will be  
23 given. 114, prior inconsistent statements. And what is you  
24 all's position on party, defendant, plaintiff, all that stuff  
25 as opposed to the names? 116, lawyer interviewing a witness.

1 Do we need that one?

2 MR. DAVIS: No.

3 MS. SCHWENDENER: I don't think so.

4 THE COURT: All right. That will be withdrawn. 117,  
5 number of witnesses. Given, there being no objection.

6 MR. DAVIS: Right.

7 THE COURT: 118, absence of evidence. Given, there  
8 being no objection. So this is where we may want to do some  
9 tweaking on 1.25, both sides. You're talking about giving  
10 separate consideration to each claim and each party in this  
11 case based on the one charge that is left, retaliation. You'll  
12 have to give me what you all's proposed instructions are, and  
13 you have to give them to each other before Tuesday, and be in  
14 early enough that we can easily fix it. Make it in Word so --  
15 I'm sorry. Yes, Word so you can get it here and we can have  
16 it. And if we can make a change, we will. So that's one  
17 that's going to be reviewed by the parties, correct?

18 MR. DAVIS: Yes, Judge.

19 THE COURT: Based on the Court's rulings. And then  
20 you can also have whatever one you want in to support or  
21 preserve your objections to my findings.

22 MR. DAVIS: And we should exchange them before  
23 Tuesday?

24 THE COURT: Yes. Well, yes, Monday you should have  
25 these exchanged, and I should have a copy of either what you

1 both are proposing, or if you all end up agreeing on one. I  
2 should have -- my staff should get it in Word. Send it to the  
3 proposed order box or to Yvette. 1.27, burden of proof is  
4 given. There being no objection. And 131, no need to consider  
5 damages instruction, and that's defendants' No. 2. Is there  
6 any objection, Counsel?

7 MR. DAVIS: No, Judge.

8 THE COURT: Given. No objection. All right. So I'm  
9 going to stop right there for a second. Clear up the record  
10 before we get to the more complicated ones. Again, defendant  
11 has two instructions so far. No. 1 is 103, and No. 2 for them  
12 is 1.31. And there's no objection. They're going to be given.  
13 Plaintiff's instructions.

14 MR. DAVIS: Well, both of those may be moot now.

15 THE COURT: Well, no. No. No. I'm not getting  
16 to -- I'm going back.

17 MR. DAVIS: Okay.

18 THE COURT: I'm going back to, to assign your  
19 instructions.

20 MR. DAVIS: Okay.

21 THE COURT: So we have plaintiff's No. 1 is 101.  
22 Plaintiff's No. 2 is 102. Plaintiff's No. 3 is 104. And we'll  
23 modify it to get rid of the brackets as we have stated on the  
24 record. Plaintiff's No. 4 is 106. Plaintiff's No. 5 is 107.  
25 Plaintiff's No. 6 is 108. Plaintiff's No. 7 is 111.

1 Plaintiff's No. 8 is 112 -- I'm sorry, plaintiff's number --  
2 yes, plaintiff's No. 8 is 112. Plaintiff's No. 9 is 113.  
3 Plaintiff's No. 10 is 114.

4 Plaintiff's No. 11 is 117. Plaintiff's No. 12 is  
5 118. 125 is going to be reworked by both sides. Plaintiff's  
6 No. 13 is burden of proof. All right. So that's caught us up.

7 All right. Does anyone have any new ones or proposed  
8 plaintiff for 132, which is the selection of the juror; 133,  
9 communication with the Court; 134, disagreement among jurors?

10 MR. DAVIS: No, Judge.

11 THE COURT: You have no changes you wish to make?  
12 All right. Any changes defense wishes to make or objections to  
13 132, 133, 134?

14 MS. SCHWENDENER: No, Your Honor. I know that we, we  
15 still need to submit the actual verdict forms, though.

16 THE COURT: Yes, you do. But you can do that also  
17 before Monday -- before Tuesday.

18 MS. SCHWENDENER: Okay. Thank you, Your Honor. No  
19 objection.

20 THE COURT: All right. So plaintiff's 14, 15, and 16  
21 are 132, 133, 134. They'll be given, no objection. All right.  
22 Then we have plaintiff's 3.01 is damages, is that correct?

23 MR. DAVIS: Yes.

24 THE COURT: And the Court also took out before we  
25 even get to damages let's go to -- show me where you are on --

1 we have 6.01. You have the due process claim elements. And we  
2 have 6.01. 6.01, the due process claim. 702, damages,  
3 compensatory damages, and then you have the back pay  
4 instruction. So do you have other ones, plaintiff, that you  
5 were just tendering that I need to address?

6 MR. DAVIS: No, Judge.

7 THE COURT: All right. Give me one second so I can  
8 clear up my schedule with the people who are waiting for me.

9 (Brief pause.)

10 THE COURT: All right. Thank you. All right. So  
11 let's go with the ones that the plaintiff is submitting.  
12 Plaintiff, first of all, due process claims. Considering the  
13 Court's rulings, you will submit it, and you can submit it as  
14 plaintiff's No. 17. And based on this Court's ruling, it will  
15 be refused. And then we have plaintiff's No. 18, I'll mark it.  
16 And that's 6.01. Any objection?

17 MS. SCHWENDENER: To plaintiff's 6.01?

18 THE COURT: Yes.

19 MS. SCHWENDENER: I have the one here I think the  
20 Court provided. I'm not sure.

21 THE COURT: I don't know if this -- plaintiff, where  
22 is yours? Did I give yours? Maybe I didn't give his.  
23 Plaintiff, do you have your original one?

24 MR. DAVIS: I do have my original one, Judge.

25 THE COURT: All right. I need to see that. Because

1 of the way you all set them out with all the paragraph things,  
2 it's just not -- it wasn't --

3 MR. DAVIS: Here's my original, Judge. Would you  
4 like to see it?

5 THE COURT: I need to see it, and then I need to have  
6 it in -- well, it depends on how long it is. But again, you  
7 all set them forth in such a way that there's all the  
8 parenthetical positioning on it. It wasn't as smooth an  
9 instruction for this Court to have ready. All right. We're  
10 talking about page -- the bottom of page 6 and page 7, is that  
11 correct? Is that where we are, 601?

12 MR. DAVIS: Yes, Judge.

13 THE COURT: All right.

14 MS. SCHWENDENER: Yes, Judge, we object to this.

15 THE COURT: All right. And, Counsel, why do you  
16 think you should not put forth the instruction that the Court  
17 has fashioned?

18 MR. DAVIS: Well --

19 THE COURT: Or have you made an adjustment? I asked  
20 you to make adjustments. Do you have a new one, or do we still  
21 have the old?

22 MR. DAVIS: No, I don't have a problem with, with the  
23 Court's.

24 THE COURT: Oh, No. 18?

25 MR. DAVIS: I like mine, but I don't have a problem.



1 THE COURT: Okay. So you'll have no trouble adopting  
2 it, is that correct?

3 MR. DAVIS: No, Judge.

4 THE COURT: All right. Defense.

5 MS. SCHWENDENER: We have no objection to the 6.01  
6 put forth by the Court.

7 THE COURT: Perfect. All right. That's --

8 MR. DAVIS: The only one question -- I'm sorry,  
9 Judge.

10 THE COURT: That's okay. That's okay. Go ahead.

11 MR. DAVIS: Since we're not allowing the police  
12 reports to go back, the reference to the police reports I just  
13 wondered if the jury's going to say what police report?

14 THE COURT: How are they going to say what police  
15 report?

16 MR. DAVIS: Should that be -- would it be better to  
17 word that --

18 THE COURT: There actually has been an instruction  
19 before I know in state -- I can't remember here, but I know  
20 I've referred to police reports are not substantive evidence.

21 MR. DAVIS: Yes. Well, I'm not sure the juries will  
22 understand that nuance, and I'm wondering if maybe the  
23 instruction should be plaintiff made a report to the police or  
24 something like that.

25 THE COURT: But isn't that what filing a police

1 report is?

2 MR. DAVIS: I understand, Judge. This is a -- just a  
3 concern out of an abundance of caution. They're going to go  
4 back there, they're going to get this evidence --

5 THE COURT: How about this, the plaintiff's reporting  
6 an incident to the police?

7 MR. DAVIS: Excellent, Judge.

8 THE COURT: In general instead of a police report.

9 MR. DAVIS: Yes.

10 THE COURT: What's your position?

11 MS. SCHWENDENER: I mean, we're not contesting that  
12 plaintiff filed a police report. It's been talked about  
13 throughout the entire case.

14 THE COURT: No, he's saying he doesn't want to get  
15 them hung up on seeing a police report in the back. So either  
16 we have to -- I mean, I know I had one case where that sort of  
17 was an issue, and we had to -- because they weren't going to  
18 get it because it was a summary, but it was discussed so much  
19 that they actually -- it was told that police reports -- it was  
20 part of a special instruction or an instruction that police  
21 reports themselves, the physical police report was not  
22 evidence, and they should only rely on how it was used in the  
23 course of the trial or something like that.

24 So all you got -- I mean, it's just basically  
25 plaintiff's -- plaintiff's reporting of a -- well, I mean

1 there's no secret. Reporting plaintiff's -- and it's  
2 plaintiff's reporting of Mr. Rogers to the police.

3 MR. DAVIS: Yes.

4 THE COURT: That's what it is. It is what it is. I  
5 mean, that's out there. If they find that the evidence shows  
6 that. So even though he says he didn't do it, she did report  
7 him to somebody. Everybody knows it. Decide on your position.

8 MS. SCHWENDENER: I guess as far as reporting to the  
9 police --

10 THE COURT: I can see where it would --

11 MS. SCHWENDENER: -- she didn't actually contact the  
12 police to report him. The police showed up at the district's  
13 office, and she spoke with the detective. I, I guess --

14 THE COURT: Well, you can fix it like this, it could  
15 be a stipulation.

16 MR. DAVIS: Judge, she did report --

17 THE COURT: No. Let me say this, it could be a  
18 stipulation that she did it, so you don't have that.

19 MR. DAVIS: Okay. Well, if they want to stipulate.

20 THE COURT: If you want to stipulate that, yes, she  
21 filed a police report for purposes --

22 MR. DAVIS: Right. I follow you, Judge.

23 THE COURT: -- so we can get through it. You  
24 understand? You know, the parties agree and stipulate, that  
25 should be -- and it'd just be another sentence to that full

1 stipulation. It is stipulated to, and then it'd say and you  
2 won't have it in the back. That's basically it. It's more of  
3 a practical stipulation. All right. So there's no  
4 misunderstandings. We stipulate that when the reference to the  
5 filing of a police report, that the police report will not be  
6 given, but the parties agree that she did report that Mr.  
7 Rogers had made statements to her.

8 So you all figure it out, but come up with a line or  
9 a stipulation that you can agree on or come close to what I'll  
10 look at, and then I'll give it to you --

11 MS. SCHWENDENER: Sure.

12 THE COURT: -- and decide. But yes. All right? So  
13 both sides refer to that. That's the only change with that  
14 one?

15 MR. DAVIS: Yes, Judge.

16 THE COURT: Is that correct? Okay. All right. I'm  
17 going to put granted with modification. And then I also have  
18 here what, 702? Was that being -- who is that being presented  
19 by? Anybody or was that me?

20 MR. DAVIS: I think this is yours.

21 THE COURT: The plaintiff must prove by a  
22 preponderance of the evidence that an individual defendant.  
23 This sort of also goes about the complaint. It goes more  
24 toward the punitive damages one as opposed to this one, just  
25 because they're all -- basically all for one and one for all

1 here.

2 MR. PETRARCA: Which is kind of what I was getting at  
3 before. When, when punitive damages aren't involved, as Your  
4 Honor knows, against a municipal defendant, there really is no  
5 individual liability. Because when you sue somebody --

6 THE COURT: Yes, it's all for one and one for all.

7 MR. PETRARCA: Yes. I mean, you're basically -- when  
8 you sue an individual and punitives are not involved, you're  
9 suing the school district. There's no difference under the  
10 law. That's what I was trying to get at.

11 THE COURT: No. I, I -- I've got what you're saying.  
12 I just want to make sure it's done right in this case since  
13 this case is not normal.

14 MR. PETRARCA: That's for sure.

15 THE COURT: Everything is going -- it would not  
16 really change counsel's argument. You can still argue about  
17 the individuals. It's just that they're part of the school  
18 board.

19 MR. DAVIS: Right.

20 THE COURT: Yes. So there may need to be -- and do  
21 you have that instruction in yours about how --

22 MR. PETRARCA: I think it was 1.25, Your Honor.

23 THE COURT: No, the -- well, does 1.25 really address  
24 this?

25 MR. PETRARCA: I don't know that we had a number on

1 the top of ours, but that's really what it was.

2 THE COURT: No, yours has although there are eight  
3 defendants, it does not follow that if one is liable, any of  
4 the others are also liable.

5 MR. PETRARCA: No.

6 THE COURT: That's the one I put the -- that's why I  
7 put a red sticker on it. Do you have your own?

8 MR. PETRARCA: It, it -- I think we submitted it to  
9 Your Honor.

10 THE COURT: Do you have theirs too, Counsel?

11 MR. DAVIS: Yes. And the only thing, Judge, is I  
12 just want to make sure they're clear that one for all, all for  
13 one doesn't mean unanimity. It just means that a board  
14 majority.

15 MR. PETRARCA: No, it says majority here, Jerome.

16 MR. DAVIS: Okay.

17 THE COURT: Is that -- let me see it. And if you  
18 have an extra one for him to look at.

19 MR. DAVIS: Okay.

20 THE COURT: You must give separate consideration to  
21 each claim in this case. You must also consider that the Board  
22 of Education can only act through the majority of its members.  
23 If you do not find that a majority of the individual defendants  
24 are liable, you may not find that the Board of Education -- you  
25 may not find the Board of Education liable. Moreover, if a

1 majority of the individual defendants are not liable, you may  
2 not find any of the individual defendants are liable.  
3 Something doesn't read right.

4 MR. PETRARCA: That's confusing.

5 THE COURT: Similarly -- yes, something doesn't read  
6 right. I've got to look at that. I know where we're going  
7 here. This is almost here. Take a look at it some more  
8 everybody including me.

9 MR. DAVIS: And I'd rather just simplify this, Judge,  
10 and say you must find that the board is responsible for the  
11 retaliation, and that the board through a majority voted to  
12 rescind the contract.

13 THE COURT: Okay. That's not any simpler either. So  
14 each person turn in what their equivalent to 125 would be --  
15 I'm sorry. 1.25 or 24? 25. Which is the multiple claims one  
16 that's modified. So work on that one. Turn it in. I think it  
17 just needs a slight adjustment. I don't think it needs a major  
18 one.

19 All right. And then 702 isn't needed anymore.  
20 Everybody agree with that?

21 MS. SCHWENDENER: Yes, Judge.

22 THE COURT: Withdrawn. Anyone -- any more for the  
23 plaintiff before I get to damages?

24 MR. DAVIS: No, Judge.

25 THE COURT: All right. So damages in general, 3.09

1 will be plaintiff's 19. Any objection?

2 MS. SCHWENDENER: Which, which number, Judge?

3 THE COURT: 309. General damages. That should be in  
4 my pack. It was.

5 MS. SCHWENDENER: You know, Judge, I apologize. I  
6 don't have that in my packet.

7 MR. DAVIS: Yes, I have that.

8 THE COURT: He has it. It's in -- it's really in the  
9 back.

10 MR. DAVIS: But it's sort of the back page of --

11 THE COURT: It's -- no, they don't have -- they have  
12 the one sided ones, but it's sort of out of order near the  
13 back. 309, 310.

14 MS. SCHWENDENER: I've got 310.

15 THE COURT: And 309. Unless it just didn't get  
16 printed. It should be in there.

17 MS. SCHWENDENER: I have 3.10 --

18 THE COURT: 309, 310, and 311. They're just  
19 standard --

20 MS. SCHWENDENER: Judge, I apologize. I, I have  
21 3.0 --

22 THE COURT: Well, it's not your fault. It might be  
23 the way it's printed out. Or may be the way I moved them  
24 around. So we'll get you a 3.09. It's if you find that  
25 plaintiff has proved any of her claims against any of



1 defendants, then you must determine what amounts of damages, if  
2 any, plaintiff is entitled to recover. Plaintiff must prove  
3 his damages by a preponderance of the evidence. If you find  
4 that plaintiff has failed to prove any of her claims, then you  
5 will not consider the question of damages.

6 MS. SCHWENDENER: Judge, I do have it. I apologize.  
7 It was labeled as 3.05. So --

8 THE COURT: Ah.

9 MS. SCHWENDENER: -- I didn't see.

10 THE COURT: Oh, I wonder if that's an old one. But  
11 anyway -- all right. Great. No. 19, that's 3.09, damages.

12 MR. PETRARCA: Judge, I'm sorry. In the last  
13 sentence of the first paragraph it says plaintiff must prove  
14 his damages. It should be her.

15 THE COURT: Oh, it should be her. Yes. Thank you.  
16 No, on the one I have -- see, yes, that's an old one you have.  
17 I have -- oh, they're the one.

18 MR. PETRARCA: Yes.

19 THE COURT: That one little sentence. All right.  
20 And that is a good example of the kind of thing I would have  
21 audibled on, and then hope you will have held your fire on.  
22 And then I would have said, yes, we'll take care of it. So  
23 that's a good example. That's usually the kind of thing we  
24 have. All right. So that's given, there being no objection.

25 310, compensatory damages. It should only be one.

1 It would be get rid of the physical, go to mental and emotional  
2 pain, and no disability. Pain and suffering -- Counsel, are  
3 you attempting to go for loss of a normal life?

4 MR. DAVIS: No, Judge.

5 THE COURT: All right. And plaintiff has  
6 experienced, no future in that bracket. That's gone.

7 MR. DAVIS: And it's saying he.

8 THE COURT: Yes. We'll fix all the gender. We'll  
9 just put that down. No evidence of dollar value needs -- for  
10 physical or mental. So it should be mental or emotional pain  
11 and suffering has been or needs to be introduced.

12 MR. DAVIS: Right.

13 THE COURT: There is no --

14 MR. DAVIS: And we take out disability --

15 THE COURT: Right. All of that is out.

16 MR. DAVIS: Right.

17 THE COURT: And then that last bracket needs to be  
18 out at the end of the sentence as to No. 1, the first bracket.  
19 No. 2, value of medical care. There's been no testimony about  
20 how much this cost her. So the Court won't talk about that.  
21 Of her care. No. 3 and No. 4 are gone, right?

22 MR. DAVIS: Yes.

23 THE COURT: So it's only one number, one paragraph,  
24 correct?

25 MS. SCHWENDENER: Yes.

1 THE COURT: All right. With those changes, which  
2 we'll attempt to make since we already have it up. Is there  
3 any objection to those changes?

4 MR. DAVIS: No, Judge.

5 THE COURT: Is there any additions? No, no  
6 additions.

7 MR. DAVIS: No.

8 THE COURT: All right. That will be plaintiff's --

9 MR. DAVIS: Her legal fees will be covered.

10 THE COURT: Well, that's not included in here.

11 MR. DAVIS: Right. Absolutely.

12 THE COURT: Right. No. 20, that was -- 310  
13 compensatory is No. 20 for the plaintiff. It will be given.  
14 We'll make the adjustments. Back pay, are you still giving  
15 this?

16 MR. DAVIS: No.

17 THE COURT: All right. Withdrawn, or you just want  
18 to have it refused? I just think there's been no testimony.

19 MR. DAVIS: This can be withdrawn, Judge.

20 THE COURT: Okay. Withdrawn. All right. What else  
21 do you have, defense?

22 MS. SCHWENDENER: We have our affirmative defenses,  
23 Judge. 1.29.

24 THE COURT: Well, first of all, the John Izzo --

25 MS. SCHWENDENER: Oh, John -- yes. Sorry, Judge.

1 THE COURT: Wait. John Izzo, he still needs to be in  
2 here because he's given testimony and he's an attorney.

3 MR. DAVIS: Right.

4 THE COURT: And he's been heard on tape. Is this --

5 MR. DAVIS: And I correct myself, because earlier I  
6 said he wouldn't be in here.

7 THE COURT: No, he's still in here.

8 MR. DAVIS: So I go back to my instruction that I  
9 proposed.

10 THE COURT: Okay.

11 MR. DAVIS: The limiting instruction for Mr. Izzo.

12 THE COURT: Okay. So that's number -- I'll make that  
13 number -- No. 21, plaintiff. And what's your position on that  
14 one?

15 MS. SCHWENDENER: We object to plaintiff's No. 21.

16 THE COURT: And what are you submitting to deal with  
17 this?

18 MS. SCHWENDENER: We, we would like to submit our,  
19 our proposed instruction regarding John Izzo.

20 THE COURT: Okay. You can present it. I'll take  
21 this under advisement. And that will be another one. So you  
22 all better be writing this down, because I'm going to be in an  
23 airport somewhere. All right.

24 MR. DAVIS: So we had it earlier as plaintiff's 18.  
25 Now, it's plaintiff's --

1 THE COURT: No. No. No. No. No. The proposed  
2 instruction has never been plaintiff's 18. It's plaintiff's  
3 21.

4 MR. DAVIS: Well, I'm looking at the thing I --

5 THE COURT: Oh, that you did?

6 MR. DAVIS: Yes.

7 THE COURT: Can I change it, please, so I don't have  
8 to change all these other ones?

9 MR. DAVIS: Sure, Judge.

10 THE COURT: All right. 20 --

11 MR. DAVIS: I just want to make sure I was --

12 THE COURT: No. No. 21 is that, that proposed  
13 instruction that you just handed me up today.

14 MS. SCHWENDENER: That's ours, Judge.

15 MR. DAVIS: That's theirs.

16 THE COURT: Oh, this is yours.

17 MS. SCHWENDENER: Yes, Judge.

18 THE COURT: Okay. Where is yours? It's in that big  
19 packet? Do you have it --

20 MR. DAVIS: I think I handed it out.

21 THE COURT: Oh, is it up here? Hold on a second.  
22 Hold on a second. You may have given it to me. I don't see it  
23 with the loose --

24 MR. PETRARCA: The one that says John Izzo is a  
25 criminal.

1 MR. DAVIS: Yes.

2 THE COURT: Oh, that's the one.

3 MR. DAVIS: That's the one.

4 THE COURT: Izzo criminal. All right. Oh, it's --  
5 oh, it's all together. Okay. You ever heard of separating  
6 these instructions.

7 MR. DAVIS: I'm sorry.

8 THE COURT: That's the way you do them. Okay. There  
9 you go. Okay. So I've got one -- I've got the one that the  
10 defendant is proposing, and then we have the one that counsel  
11 for the plaintiff is proposing. All right. I'll take a look  
12 at each and let you know which one I'm going to do.

13 MR. DAVIS: Okay. Thank you, Judge.

14 THE COURT: And defendant that will be your No. 3?  
15 Because I've done a 1 and a 2.

16 MS. SCHWENDENER: Yes.

17 THE COURT: Okay. Any more, defense?

18 MS. SCHWENDENER: Just our affirmative defenses,  
19 Judge.

20 THE COURT: And you must -- where, where is that one?

21 MS. SCHWENDENER: I don't know that I submitted that  
22 one.

23 THE COURT: I don't -- I see a you must give --  
24 that's the other one about you must give consideration to the  
25 separate. We already have that. And why don't you send me

1 that one too.

2 MS. SCHWENDENER: Sure, Judge.

3 THE COURT: All right. That gives him a chance to  
4 look at it. Send that too.

5 MS. SCHWENDENER: Sure.

6 THE COURT: On the proposed. Again, everything needs  
7 to be in Word. And you all need to discuss them. Just at  
8 least know your positions on them. And after that we need the  
9 verdict form, is that right?

10 MS. SCHWENDENER: Yes.

11 MR. DAVIS: Yes, Judge.

12 THE COURT: And after the verdict forms anything else  
13 that you all come up with for instructions, or that we may have  
14 missed or my staff may say, oh, what about this, we will try to  
15 get in before Tuesday morning. And then we'll deal with it  
16 Tuesday morning. I need you all here at 8:45 Tuesday morning.

17 MS. SCHWENDENER: 8:45?

18 THE COURT: 8:45. We've got to get through this.

19 MS. SCHWENDENER: Sure. Thank you, Judge.

20 THE COURT: All right. And then you need time to be  
21 able to adjust if you need to. And we will not have the final  
22 set of instructions ready until sometime probably during the --  
23 during the presentations. So we'll be working on them as we go  
24 unless we get them done -- unless they're so short we get them  
25 done before 10. Then, you know, you'll have them.

1 MS. SCHWENDENER: Sure.

2 THE COURT: So if we don't have the exact language on  
3 an instruction, don't attempt to use it. All right. But if  
4 you have the exact language, you can use it. All right. So if  
5 you have the exact language of a particular instruction that  
6 you're putting up, you can put that up if it's one that has  
7 already been ruled on.

8 MS. SCHWENDENER: Sure.

9 THE COURT: If it's one we're working through and you  
10 don't have the final in front of you, I would leave it alone.

11 MS. SCHWENDENER: Okay.

12 THE COURT: Okay. Understood, plaintiff?

13 MR. DAVIS: Yes, Judge.

14 THE COURT: All right. Anything, anything else  
15 before we break? And I will see you Tuesday morning. I will  
16 hear from you before that.

17 MR. DAVIS: Yes, Judge.

18 THE COURT: Thank you. Have a good weekend.

19 MS. SCHWENDENER: Thank you, Judge.

20 MR. PETRARCA: Thank you, Judge.

21 MR. DAVIS: Thank you, Your Honor.

22 MS. SCHWENDENER: Thank you.

23 MR. DAVIS: Take care.

24 (Whereupon, said trial was recessed at 5:00 p.m., to  
25 reconvene on 11/6/18, at 8:45 a.m..)